



Appeal Decision

Hearing held on 20 November 2019

Site visits made on 19 and 20 November 2019

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd January 2020

Appeal Ref: APP/Z4718/W/19/3232430

Land adjacent Upper Quarry Road and Bradley Road, Bradley, Huddersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr G R E Bottomley against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/60/93847/W, dated 6 November 2017, was refused by notice dated 10 January 2019.
 - The development proposed is demolition of existing dwelling and outline application for the erection of 36 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr G R E Bottomley against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline, with all matters reserved except for the access. I have dealt with the appeal on this basis, treating proposed site layout plans as illustrative, except in relation to the access.
4. Amended access plans (drawing nos 1707802d; 1905501-1 Rev A; 1905501-2 Rev A) have been submitted for consideration, showing suggested alternative options for the junction arrangement. The Council provided a written response to the additional plans at the Hearing and the appellant has had the opportunity to respond. The suggested changes are within the red line boundary and do not fundamentally change the nature of the proposal. I am, therefore, satisfied that no party's interests would be prejudiced by accepting the plans for initial consideration. I address the implications of the amended plans in my reasoning below.

Main Issues

5. The main issues in this case are:
 - The effect of the proposal on highway safety.
 - Whether the proposal would make adequate provision for affordable housing?

- Whether the proposal would make adequate provision for open space?
- Whether the proposal would make adequate provision for education?

Reasons

Highway safety

6. The appeal site consists of a vacant field and garages within an existing residential area. The site is served by an unadopted lane between numbers 32 and 34 Bradley Road which forms a junction with the A6107 Bradley Road. Bradley Road is tapered on the approach to the traffic signal-controlled junction with the A62 Leeds Road and has a footway and off-road parking lay-bys either side of the access road.
7. A single eastbound lane exists on Bradley Road immediately outside the site; however, this becomes two lanes to the east of the site's entrance and three lanes further east on the approach to the Bradley Road/Leeds Road junction.
8. The centre of Bradley Road is hatched with a series of right turning pockets including one into the existing access road. A keep clear marking is provided across Bradley Road at the entry to the access road. An eastbound on-road cycle lane on Bradley Road terminates immediately prior to the site access road.
9. Traffic flows along this section of Bradley Road are high at morning and evening peak times. Peak hour flow data provided for a planning application for another site off Bradley Road included am and pm peak hour flows on Bradley Road. In the am peak (0800-0900) there were around 1,400 two-way movements (680 eastbound and 720 westbound) and in the PM peak (1700-1800) 1,470 two-way movements (800 eastbound and 670 westbound).
10. The appellant's Transport Statement provided trip generation rates for the appeal proposal on the basis of 40 units which would generate 9 arrivals and 21 departures in the morning peak hour and 20 arrivals and 13 departures in the evening peak hour. Based on 36 units this would equate to 8 arrivals and 19 departures in the am peak and 18 arrivals and 11 departures in the pm peak. The Council does not dispute this evidence.
11. A queue survey undertaken by the appellant at the application stage shows that in any time period, of the three established approach lanes, between the site's entrance and the Bradley Road/Leeds Road junction, only one experienced queues which extended as far as 28 and 30 Bradley Road, while the queue lengths in the other two lanes were considerably shorter. However, the Council's own surveys carried out at PM peak observed vehicles queuing past the site entrance in two lanes, with vehicles frequently encroaching on to the right turn pocket, into the site access and over the central hatched area.
12. At the request of the Council the appellant subsequently undertook video surveys which shows that vehicles queued past the site access in two lanes, sometimes past the existing refuge. My own observations on my site visits confirmed this and I noted that on occasion, queues extended past the Upper Quarry Road junction at peak PM time.
13. The video survey shows that the longer lane queues in one lane past the existing pedestrian refuge and, depending on the size and position of vehicles in the queue, a slow moving but free flowing line of traffic on the inside of the queue. On

occasion, a faster moving inner lane was observed where vehicle size and position allowed.

14. The video survey also showed that the cycle lane encourages vehicles to over-run the central hatching whilst the inside lane of traffic must enter the cycle lane. However, the width of carriage way is such that vehicles only encroach into the hatching by up to a metre leaving some 2.5m or more for right turning vehicles to enter the pocket(s) and enter the site access or Upper Quarry Road and remain clear of the through traffic on the westbound carriage.
15. It was also noted that on one occasion a car overtook the two lanes of traffic to join a short queue in lane 3 by driving over one or both right turn pockets. Vehicles also on occasion encroached into the parking layby on the mouth of Upper Quarry Road to pass stationary or slower moving vehicles in the outside line of traffic. The video survey shows that only one vehicle was observed to overrun the nearside footway at the existing pedestrian refuge west of the Upper Quarry Road junction.
16. The existing access road will be reconfigured in order to provide an access with a width of 5.5m together with 2m footways to either side, facilitated by the demolition of number 32 Bradley Road. The junction onto Bradley Road would have increased radii to either side, 6m to the east and 10m to the west. The access requires the existing laybys to the northern side of the carriageway along Bradley Road to be shortened slightly. The Council has not raised concerns regarding the reconfiguration of the existing access road itself.
17. In order to improve pedestrian access to the site a pedestrian refuge is proposed west of the improved junction approximately 2m in width and 5m in length. A pedestrian build-out is also proposed to the southern side of the carriageway within the layby area to provide a pedestrian link to the existing southern footway. It is also proposed to remove the existing keep clear marking at the Upper Quarry Road junction and the site access and replace with yellow box marking and red surfacing in the cycle lane.
18. The pedestrian island west of the junction would allow a width of 5.5m for the eastbound carriageway enabling vehicles to continue to queue in two lanes and so there would not be a detrimental effect on queue length or congestion along Bradley Road. The proposed modifications to the right turn lane into the site would not affect the storage capacity of the approach lanes to the A62 signals.
19. I consider that the pedestrian refuge and build-outs would improve pedestrian crossing facilities and provide a degree of protection to right-turning vehicles. It would also help to prevent the situation of vehicles overtaking the two lanes of traffic by driving over the right turn pocket to join a short queue in lane three.
20. An independent Stage 1 Road Safety Audit identifies in table 2.2 (Problem 2) that stationary traffic regularly queues in the offside lane with free-flowing traffic in the nearside lane and that visibility for right turning vehicles will be impeded by the queue, which increases the potential for a collision with an eastbound car, motorcycle or cyclist travelling in free-flowing conditions in the nearside lane. This echoes the Council's concerns that the proposal would intensify right turning movements into the site. It considers that vehicles turning through queueing traffic into a live lane is one of the major causes of injury accidents in the area due to a lack of inter-visibility. It is also concerned about vehicles overrunning the footway.

21. Due to the proposed carriageway width, the pedestrian refuge would not prevent two lanes forming and whilst the yellow box junction would encourage drivers to leave the site access clear, it would not prevent the situation of a vehicle crossing a stationary and then live lane of traffic. Consequently, the highway safety issue identified by the Road Safety Audit would still exist.
22. The video surveys undertaken on behalf of the appellant show that most people arriving at Upper Quarry Road do so from the southwest and turn left into the access to the appeal site. In the AM peak hour only 20% of arrivals turned right into Upper Quarry Road whilst in the PM peak (1700-1800) the proportion was 17.6%. It also showed that the level of right-turn movements into Upper Quarry Road from Bradley Road varied but averaged around 8 movements per hour (which serves 39 dwellings). This survey work provided information regarding the distribution of traffic which was then applied to the predicted flows for the proposed development.
23. Applying the same distribution to the predicted traffic arising from the appeal proposal right turn movements into the site would increase by 2 and 3 vehicle movements in the AM and PM peak hours respectively, equating to one movement every 20 minutes. The appeal proposal would result in an additional 6 arrivals and 14 departures in AM peak and 13 arrivals and 8 departures in PM peak over and above the consented development. The net increase in right turning movements into the site access above the level which the Council has already accepted equates to an additional 1 to 2 movements per peak hour.
24. Attention is drawn to the appellant's video survey which shows that the queue on the approach to the traffic signals only extends beyond the proposed access to the appeal site for just over a fifth of the peak hours surveyed. The potential situation where a vehicle would be turning right across a stationary lane and live lane would not, therefore, occur for the majority of the peak period (almost 80%) or for the rest of the day when vehicles pass through the junction free flowing. The appellant, therefore, considers that the increase in traffic and right-turn movements is insignificant and that the effect on highway safety is not considered to be material.
25. Whilst I acknowledge the appellant's evidence; there would, nevertheless, be an increase in right turn movements with limited visibility which would increase the risk of collisions. The extent to which the increased risk is materially significant depends upon the severity of the risk and the context of the existing road conditions.
26. The Council draws attention to a number of junctions in the area which it considers demonstrates the danger of vehicles turning right through either slow moving or standing traffic resulting in injury. Whilst those cases serve to demonstrate the danger of right-turn movements, they do not appear to be directly comparable to the appeal proposal in terms of volume of traffic, road layout etc.
27. As agreed by the parties at the hearing the most directly comparable junction in terms of road layout and volume of traffic is the Upper Quarry Road with Bradley Road junction which serves a similar number of dwellings (39) to the appeal proposal. An accident occurred when a motorcyclist was hit by a vehicle turning right through a queue across the live lane occupied by the motorcyclist. The appellant considers that one accident in 7 years does not indicate a road safety problem of any significance and that based on the video evidence, drivers using the junction appear to adapt safely to the situation of queuing traffic.

28. Attention is also drawn to the fact that there are no records of any serious accidents at the access to the appeal site in the last 10 years. Whilst this may be the case, the existing access only serves a few dwellings and some free-standing garages and so the use is relatively limited. Although there are no records of any serious accidents evidence was presented at the hearing by local residents of minor incidents which have not been reported.
29. I acknowledge that the accident rate at Upper Quarry Road is low and that the junction serves a similar number of properties. Nevertheless, the appeal site access is closer to the main Bradley Road/Leeds Road junction than the Upper Quarry Road junction. When vehicles queue past the site access in two lanes during peak hours I noted on my site visit the inner lane of traffic can flow quickly depending on the sequence of the traffic lights at the junction. Furthermore, I noted that vehicles speed up on the inner lane in order to get through the traffic lights whilst on green. Consequently, due to the proximity to the main junction, I consider that the risk associated with right-turn movements at the appeal site is greater than at the Upper Quarry Road junction.
30. The appellant has prepared a designer's response to the issues raised in the Road Safety Audit and some of those issues have been addressed by way of measures set out in a revised plan (ref: 1707802d). These include amongst other things: the relocation of an Advance Directional Sign in order to ensure drivers select the right lane in the approach to the junction; and adjustments to the existing and proposed tapers to the layby.
31. The proposed yellow box junction may provide vehicles with the opportunity to turn right whilst both lanes of traffic are stationary; however, it would not address the issue of vehicles turning right across a stationary lane of traffic whilst the inner lane of traffic is moving and reduced visibility. Furthermore, although the red surfacing would draw attention to the cycle lane itself; it would not improve driver's visibility of approaching cyclists. Consequently, I do not consider that the mitigation measures put forward in Plan No 1707802d would address highway safety concerns identified in the Road Safety Audit to an acceptable degree.
32. In response to the Road Safety Audit, the appellant has prepared an alternative scheme (1905501- Rev A and 1905501-2 Rev A, described as Option 2) which physically narrows the carriageway at the pedestrian refuge to force drivers to use the road as a single line of traffic. However, as highlighted by the Road Safety Audit, this would not prevent two lanes of traffic forming immediately east of the refuge island, across the junction bell mouth and so option 2 would not satisfactorily address the highway safety risk either. The Road Safety Audit recommends that the eastbound lane is physically restricted to a single lane opposite the bell mouth of the junction. However, as set out in the designer's response, any physical measure to prevent two lanes forming would also prevent right turn movements.
33. Furthermore, the reduction of the carriageway to single width at the pedestrian refuge would have the potential to increase congestion in the approach to the junction. The potential effects on the free-flow of traffic have not been assessed and, therefore, I am unable to take into account Plans numbered 1905501- Rev A and 1905501-2 Rev A in my Decision.
34. The Council confirmed at the hearing that the positioning of bollards on the pavement at both the proposed and existing refuge would discourage overrunning

of the footway and address their concerns in this respect. These could have been secured by condition, had I decided to allow the appeal.

35. Paragraph 108 of the Framework states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that, amongst other things, a safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network (in terms of capacity and congestion), or highway safety, can be cost effectively mitigated to an acceptable degree.
36. Paragraph 109 goes on to state that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.
37. Whilst the unofficial two-lane queueing along Bradley Road in the proximity of the appeal site access is not ideal and should not be condoned, my consideration must be undertaken within the context of the road conditions present at the time of my decision. Even considering the fall-back position, within the context of the existing difficult road conditions and proximity to the junction, the increased risk would, in my view, be materially significant.
38. The fact remains that the highway safety issue identified in the Road Safety Audit would not be satisfactorily mitigated. Traffic turning right into the site access would have limited visibility due to the stationary queue of traffic and would have to cross a live lane of traffic which can be fast flowing which would in my view increase the risk of serious accidents occurring. Motorcyclists and cyclists would be at particular risk due to their small size and limited visibility. The proposal would, therefore, result in an unacceptable increased risk of collision to the detriment of highway safety.
39. Consequently, for the reasons stated above, the proposal would not be able to achieve a safe and suitable access and would have an unacceptable impact on highway safety. It would, therefore, conflict with Policy LP21 which requires that, amongst other things, proposals can be accessed effectively and safely by all users. Conflict also arises with paragraphs 108 and 109 of the Framework.

Provision of affordable housing

40. The Kirklees Strategic Housing Market Assessment 2016 (the SHMA) identifies a pressing need for affordable housing in the Borough. In the Huddersfield North Sub-area, there is a need for 3-bedroom (or larger) houses and a less but still substantial need for one- and two-bedroom homes. The sub-area has one of the lowest rates of ownership in Kirklees (at just over 60%).
41. Policy LP11 of the Local Plan seeks to ensure that proposals for housing provide a mix (size and tenure) of housing. It states that the Council will negotiate with developers for the inclusion of an element of affordable homes in planning applications for housing developments of more than 10 homes. The proportion of affordable homes should be 20% of the total units on market housing sites. It goes on to say that the proportion may be less where viability evidence demonstrates that there are development costs which would otherwise prejudice the implementation of the proposal. The preference is for affordable homes to be provided on site but where justified a financial contribution of at least equal value may be accepted to provide affordable homes elsewhere or to re-use or improve housing stock.

42. The supporting text to Policy LP11 at paragraph 8.38 states that negotiation will take place on individual planning applications if viability information is provided to show that the level of affordable homes required cannot be delivered.
43. In light of the pressing need for affordable housing a contribution would normally be required to make the development acceptable in planning terms. The contribution is calculated at equal value to that of on-site provision in order to enable provision elsewhere and would, therefore, be directly related and fairly and reasonably related in scale and kind to the development. Consequently, I consider that the requested affordable housing contribution would meet the tests set out at Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 and the Framework.
44. In order to meet the requirements of Policy LP11, seven of the 36 units proposed would need to be provided as affordable housing. No affordable housing is proposed, either on or off-site by the appellant. Furthermore, there is no mechanism before me such as a Section 106 obligation by which to secure an off-site contribution.
45. The appellant has undertaken a Viability Appraisal which concludes that with or without Section 106 obligations relating to affordable housing, open space and education contributions, a negative site value is arrived at and that the proposed development is not viable. The appellant attributes the negative site value to depressed and stagnant house prices in the area as a major reason for the proposed development being unviable.
46. The Council appointed independent viability consultants who have reviewed the viability evidence and have undertaken a further assessment using the appellant's and their own figures and allowances. They also conclude that the proposed development is not viable, would not deliver an acceptable level of profit to a potential developer and that the development of the site cannot meet any affordable housing requirements nor any other planning obligations and be viable. It is not, therefore, in dispute that the proposal would not be viable either with or without affordable housing or other contributions. From everything which I have seen in submissions, there is no reason to disagree.
47. In the absence of affordable housing provision, the Council's position is that known housing need would not be met and that the proposal would be contrary to Policy LP11.
48. Policy LP11 includes a viability clause as an integral part of the policy; however, I agree with the Council that the wording of the Policy does not necessarily compel the decision maker to accept a lower proportion of affordable housing. Nevertheless, the presence of the viability clause, as recognised by the Inspector who considered the Local Plan at paragraph 74 of her report, provides flexibility to deal with cases where viability is an issue.
49. Paragraph 57 of the Framework states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.
50. It goes on to say that *"the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including*

whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force". The site is not allocated in the Plan and so was not appraised on an individual basis in the Local Plan Viability Study¹. The Viability Appraisal presented by the appellant has been assessed by independent consultants on behalf of the Council who agree with its conclusions. On the basis of evidence in submissions and at the hearing, and in light of the independent verification of the report, I consider that the Viability Appraisal can be given significant weight in my Decision.

51. The Local Plan Inspector states that the affordable housing shortage would be met through the provision of more than 250 affordable homes per year from outstanding permissions and new allocations. I also note that the affordable housing trajectory (figure 8) of the Local Plan includes completions, commitments and local plan allocations but not windfalls. This would seem to imply that the affordable housing requirement could be met from those sources. On this basis, the harm arising from the lack of 7 affordable units on this site would be limited and would not jeopardise the ability of the Council to meet its overall affordable housing target.
52. The viability clause in Policy LP11 enables flexibility to the decision maker to agree the provision of less affordable housing than the requirement of 20% and in my view the term 'less' would include no provision. Consequently, and in the particular circumstances of this case, I consider that whilst not making provision for affordable housing, the proposal would not be in conflict with Policy LP11.

Open space

53. Policy LP63 of the Local Plan states that new housing developments will be required to provide or contribute towards new open space or the improvement of existing provision in the area, unless the developer clearly demonstrates that it is not financially viable for the development proposal. New open space should be provided in accordance with the Council's local open space standards or national standards where relevant. In areas where existing open space provision is insufficient to meet local needs, provision of new open space on-site would be preferred to meet the needs of development. Where it is not viable the expansion or improvement of existing open space provision in the area will be sought.
54. The District wide open space provision standards are set out at Table 12 of the Local Plan. Based on these standards, a contribution toward natural/semi-natural greenspace and allotments within Ashbrow Ward is not required as the quantity standard has been met. Either on-site provision of parks and recreation (19.44 m² per dwellings) or an off-site contribution is required as the quantity standard in Ashbrow Ward has not been met. The Council indicates that a contribution towards the improvement of the nearby Oak Road Recreation Ground could be provided. The Recreation Ground is close to the site and would, therefore, be used by residents of the scheme.
55. The quality standard for amenity greenspace has not been met and so the provision of new amenity space equating to 14.58 m² per dwelling would be required. As the quantity standard has been met and whilst a contribution to off-site provision could be secured, on-site provision would help to achieve a well-designed scheme and meet the needs of residents in accordance with the fifth paragraph of Policy LP63. Children's equipped designated play areas provision

¹ Local Plan and Community Infrastructure Levy Viability Study 2015 and subsequent updates (Cushman and Wakefield)

should be provided at 0.25 hectares per 1000 population, equivalent to 6.1 m² per dwelling. This would equate to a requirement for 219 m² for 36 dwellings. Provision for young people would be 7.3 m² per dwelling resulting in a requirement for 262 m² per dwelling. Overall, children and young people provision would equate to around 482 m².

56. Whilst the appellant challenges the Council's request for contributions towards some typologies, the proposal would include 36 dwellings some of which would be family housing and so would generate demand for open space facilities. Provision is required where there is a quantitative or qualitative deficiency. Consequently, open space provision in the typologies referred to above either on-site or a contribution would normally be required to make the development acceptable in planning terms.
57. The physical requirement has been worked out based on standards contained in an up-to-date plan and the Open Space study which informed the plan in terms of quantity and quality standards and deficiencies. The requirement in square metres has then been translated into a financial contribution on the basis of the cost of providing equivalent provision 'on the ground'. The formula for calculating the financial contribution includes a 15% administration fee and it is not clear how this has been determined; however, I would have requested further information on this matter, had I decided to allow the appeal.
58. Overall, I consider that the requirement has been worked out on a proportionate basis on up-to-date standards in the Local Plan and would, therefore, be fairly and reasonably related in scale and kind to the development. Consequently, the requested open space requirement and contribution would meet the tests set out in Regulation 122 of the CIL Regulations and the Framework.
59. The proposal does not currently propose any on-site open space provision nor is it proposing a contribution to off-site provision. However, the Policy clearly states that new housing developments will be required to make provision *unless* the developer clearly demonstrates that it is not financially viable for the development proposal (my emphasis). The policy, therefore, provides sufficient flexibility to take financial viability into account. As explained above, I give significant weight to the Viability Appraisal in my Decision.
60. At the hearing, the appellant indicated that they would be willing to consider a planning condition to provide open space on-site and indeed some amenity space provision would be required in order to provide an attractive development. It is not clear whether all the typologies required could be provided on-site; however, I would have gone back to parties for clarification, had I decided to allow the appeal. Consequently, there would have been potential to include some open space as part of the proposal had I decided to allow the appeal. Due to the presence of the viability clause, I do not consider that the proposal would conflict with Policy LP63 of the Local Plan.

Education

61. Policy LP49 states that where the scale of development proposed may impact on education and health provision, the Council will actively work with applicants to resolve key planning issues in advance of a planning application being submitted.
62. It goes on to say that the need for the provision of additional school places will be a material consideration when proposals for new housing development are

considered. Developers should work with the Council at the earliest opportunity to ensure the phasing of development and appropriate mitigation is identified in a timely manner to ensure education provision can be secured.

63. The Policy is consistent with paragraph 94 of the Framework which highlights the importance of providing a sufficient choice of school places to meet the needs of existing and new communities. Local Planning Authorities should take a proactive approach to meeting this requirement and should give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.
64. The Council's Providing for Education Needs Generated by New Housing provides further details on how the Council calculates contributions for education needs generated by new housing. The Council clarified at the hearing that the document is not Supplementary Planning Guidance but has been adopted by the Council. It is based on detailed research and forms a consistent and transparent basis for calculating contributions towards education provision.
65. Paragraph 3.1 states that in any proposal of 25 dwellings or more the need for educational contributions will be a material consideration. Contributions will only be sought where the new housing will generate a need which cannot be met by existing local facilities. Provision at these schools will be assessed to determine whether there is or will be sufficient capacity to accommodate the extra pupils that the proposed development would generate. The basis of this will be the school's number on roll data, forecasts of pupil numbers at relevant schools and the Net Capacity of school which is a measure of the accommodation capacity of schools. The LA's forecasts of additional pupils from new dwellings are based on the assumption that an additional 3 children per 100 houses per year group will be generated for primary and 2 for secondary.
66. Where the number of children generated by the development would increase the numbers on roll (NOR) over the net capacity, a financial contribution would be sought for each child over the net capacity. This would apply if forecast numbers on roll show a deficit of school places resulting from the additional children generated from the new housing. The basis of calculating a contribution will be the DCSF cost multiplier. The present cost multipliers for Kirklees are £11,767 per primary pupil and 17,730 per secondary pupil.
67. The Primary Admission Area Primary School is identified as St Thomas CE (VC) Primary School. On the basis of 3 children per 100 houses per year group, the development would generate an additional 5.4 school places. At the time which the housing units will be occupied (19/20) there would be a surplus of 2 places, hence 3.4 extra places would be required. On the basis of the DCSF cost multiplier (£11, 767) the contribution for 3.4 places would be £40,008 towards primary school provision. As the North Huddersfield Trust Secondary School has surplus spaces and no contribution to secondary school education is required.
68. Any family housing would generate additional pupils which would place pressure on existing education provision. Furthermore, it has been demonstrated that a shortfall in primary provision would arise as a result of the proposal at the Primary Admission Area Primary School at the time which the housing units would be occupied. The contribution would, therefore, be necessary to ensure that the development meets the needs of its residents and to make the development acceptable in planning terms. Furthermore, the contribution has been calculated on the basis of the DCSF cost multiplier and is, therefore, fairly and reasonably

related in scale and kind to the development, having regard to local provision already available. Consequently, I consider that notwithstanding viability issues, the requested contribution meets the tests set out at CIL Regulation 123 and the Framework.

69. Whilst a specific project has not been identified the Council confirmed at the hearing that it has a system of monitoring to ensure that contributions secured are directly related to the development in question. CIL Regulation 123 regarding the pooling of contributions is no longer relevant. Whilst I note the appellant's comments regarding the emerging Community Infrastructure Levy for the District, this has not yet been adopted.
70. The appellant has challenged the proposed contribution on the basis of a document 'Securing Sufficient High Quality Learning and Childcare Places'² which states that for the Huddersfield North area the trend in the number of children living in this planning area per year group towards 2021 is broadly static. However, unlike some other areas it does not say that there is no immediate need for additional places. Furthermore, this is a summary at the planning area level; whilst the Council's calculations are based on a detailed assessment of the Primary Admission Area Primary School.
71. Attention is drawn to the proposal to develop over 2000 houses at Bradley Park Golf Club where it is intended to provide new primary schools for the area. However, I note that no planning permission is in place for the school, and the Bradley Park site is significantly further away from the appeal site than St Thomas CE (VC) Primary School. Furthermore, the need for this additional school presumably arises at least in part from the proposed development for 2000 houses.
72. Policy LP4 relating to infrastructure provision states that new development should contribute to the provision of infrastructure, taking account of local and strategic needs and financial viability. Whilst Policy LP49 does not contain a viability clause, the plan must be read as a whole and in my view Policy LP4 provides the flexibility to take viability into account.
73. As discussed above I consider that significant weight can be attached to the Viability Appraisal in my decision. Consequently, whilst the proposal would not make provision for education, taking account of the viability appraisal, and in the particular circumstances of this case, I conclude that the proposal would not be in conflict with Policy LP49 or LP4.

Other Matters

74. Consultation has been undertaken on three options for a proposed relief road, all of which cross the site. The proposed relief road is at an early stage of the consultation process and the Council has confirmed that it is not a material consideration in this case; and I agree.
75. The Council has suggested a condition relating to metro cards and bus stop improvements. I have not considered the suggested conditions in detail as I have decided not to allow the appeal.

² Securing Sufficient High Quality Learning and Childcare Places, School Organisation, Planning and Development for 2018-2021' Kirklees Council

Planning Balance and Conclusion

76. The proposal would not make provision for affordable housing, education or the full extent of open space; however, Policies LP11, LP63, and LP49, taken together with Policy LP4 provide sufficient flexibility to deal with situations where flexibility is an issue. I attribute significant weight to the Viability Appraisal and so in the particular circumstances of this case, the proposal would not be in conflict with those policies. However, I have found that the proposal would cause harm to highway safety and conflict with Policy LP21. The conflict with Policy LP21 carries significant weight against the appeal and I consider that the proposal conflicts with the development plan as a whole.
77. The Council adopted its Local Plan in February 2019 and there is now a five-year supply of housing land. Paragraph 12 of the Framework states that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.
78. The proposal would have the potential to deliver market housing – which the Framework seeks to boost significantly – in an accessible location. The proposal would also have the potential to benefit the local economy by generating jobs during the construction phase and through resident spend in the longer term. The economic benefits would be generic and would arise with any development. There would also be some environmental benefits in the utilisation of a partial previously developed site and potential for a biodiversity net gain. Whilst I acknowledge that granting planning permission would provide at least some chance of development being delivered on the site along with the associated benefits, due to the uncertainty of the development coming forward, I can only attach moderate weight to these benefits in my Decision.
79. The considerations in favour of the development collectively carry moderate weight, but not sufficient in my view to overcome the harm to highway safety or the statutory presumption in favour of the development plan. The harm to highway safety and the conflict with Policy LP21, justifies a decision to refuse planning permission in this case.
80. For the reason stated, and with regard to all other matters raised, I conclude that the appeal should be dismissed.

Caroline Mulloy

Inspector

APPEARANCES

For the Local Planning Authority

Victor Grayson	BA (Hons) MTP MAUD, Development Management Masterplanner
Louise Hewlett	MEng, Principle Engineer, Traffic Signals
Joe Walker	HNC, Principal Engineer, Highways Safety
Ryan Kinder	HNC, Principal Engineer, Highways Development Management

For the Appellant

Mr Nicholas Willock	BSc (Hons), MA (Town and Regional Planning), MRTPI, MRICS
Mr Eric Appleton	B Eng. (Hons), DMS, C Eng. MICE, MCIHT

Interested Persons

Jane Walker	Resident
Carol Wright	Resident, Upper Quarry Road

HEARING DOCUMENTS

Documents submitted on behalf of the Council

Providing for Education needs Generated by New Housing
Further highways response of the LPA 20/11/19

Documents submitted on behalf of the Appellant

Extract from Manual for Streets
Appellant's note entitled 'Other matters' dated 19/11/19v
Appellant's note to Inspector dated 19/11/19
Costs Application
Response to new evidence received 19/11/19 (incl Kirklees Local Plan and CIL Viability Addendum (2016))

Appeal Decisions

Site visit made on 26 November 2019

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2019

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Mr Nathan Still (Infocus Public Networks Limited) against the decision of Kirklees Council.
 - Each development proposed is for the installation of a communication hub on the highway by an electronic communications code operator.
-

Appeal A Ref: APP/Z4718/W/19/3235275

Outside 11-13 Ramsden Street, Huddersfield HD1 2SX

- The application Ref 2019/91612, dated 15 May 2019, was refused by notice dated 8 July 2019.
-

Appeal B Ref: APP/Z4718/W/19/3235277

Outside 4 Market Place, Huddersfield HD1 2AN

- The application Ref 2019/91614, dated 15 May 2019, was refused by notice dated 8 July 2019.
-

Appeal C Ref: APP/Z4718/W/19/3235280

Outside 52 John William Street, Huddersfield HD1 1ER

- The application Ref 2019/91615, dated 15 May 2019, was refused by notice dated 8 July 2019.
-

Appeal D Ref: APP/Z4718/W/19/3235284

St George's Square, Huddersfield HD1 1JB

- The application Ref 2019/91620, dated 15 May 2019, was refused by notice dated 8 July 2019.
-

Appeal E Ref: APP/Z4718/W/19/3235286

Outside 19-23 Market Street, Huddersfield HD1 2EH

- The application Ref 2019/91616, dated 15 May 2019, was refused by notice dated 8 July 2019.
-

Appeal F Ref: APP/Z4718/W/19/3235287

Outside 25-27 New Street, Huddersfield HD1 2AZ

- The application Ref 2019/91618, dated 15 May 2019, was refused by notice dated 8 July 2019.
-

Decisions

1. Appeals A, B, C, D and E are dismissed.

2. Appeal F is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a communication hub on the highway by an electronic communications code operator at land outside 25-27 New Street, Huddersfield HD1 2AZ in accordance with the terms of the application Ref 2019/91618, dated 15 May 2019, and the plans submitted with it.

Procedural Matters

3. As set out above, there are 6 separate appeals, each for the installation of a communication hub on the highway by an electronic communications code operator pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Whilst each appeal relates to a different site, the proposed communication hubs are identical and they are all within walking distance of each other in Huddersfield town centre. I have considered each proposal on its individual merits, but as they raise similar issues, the cases are dealt with in a single decision letter.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO. The amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an appeal has been lodged within 6 months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of the 6 appeals before me.
5. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) requires the local planning authority to assess the proposed developments solely based on their siting and appearance, considering any representations received. My determination of these appeals has been made on the same basis.
6. The provisions of the GPDO require the proposed development to be assessed solely on the basis of its siting and appearance. Therefore, whilst the appellant has referred to the purported benefits of the proposed kiosk, I have not taken these matters into account other than in respect of heritage assets where the National Planning Policy Framework (the Framework) advises at Paragraph 196, "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal".

Main Issue

7. The main issue is the effect of the siting and appearance of the proposed communication hubs upon the character and appearance of the locations proposed; with specific regard to the Huddersfield Town Centre Conservation Area, and as identified in each appeal below, the setting of designated heritage assets.

Reasons

8. Each communication hub would be a dark grey rectangular structure, around 2.63 metres high, 1.34 metres wide with a depth of about 0.32 metres. The fronts would contain a projecting canopy of around 0.6 metres under which would be a digital interactive touch screen, telephone handset and emergency call button. Clear glazed side sections are incorporated in the design that would enable visibility through the structure.
9. The overall appearance of the communication hub is modern, utilitarian, tall and bulky. In this regard, it may not be suitable in more sensitive locations. That said, its location in less sensitive areas could be appropriate as there is nothing fundamentally offensive about the design.
10. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have had regard to the policies of the development plan and the Framework only in so far as they are a material consideration relevant to matters of siting and appearance.
11. The appeal sites are all located within Huddersfield Town Centre Conservation Area (CA). The significance of the CA is derived from its historic, evolving and high quality townscape and the diversity of its architecture. The statutory requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Furthermore, I have considered the impact of the proposals on the setting of various listed buildings, as referred to in each appeal, and had special regard to the desirability of preserving the setting of each listed building as required under Section 66(1) of the Act.

Appeal A

12. The site for the proposal would be outside 11-13 Ramsden Street, adjacent to a pedestrian junction between Ramsden Street, Peel Street and Victoria Lane. The site is also located opposite Huddersfield Town Hall, and directly west of Huddersfield Library and Queensgate Market. All 3 of these buildings are Grade II Listed. The setting of the listed buildings encompasses the form of the street pattern and relationship with surrounding buildings.
13. There is very little other street furniture in the area in this location, and this gives the footways and public areas a sense of space and openness that contributes towards the historic character and townscape. Furthermore, where there is street furniture, it is of a traditional style with conservation type street lighting columns. The frontage to No 11-13 is traditional and well preserved, with narrow and well-proportioned openings.
14. In this location, the proposal would introduce a modern, tall and substantially sized conspicuous development into the street. Despite its narrow profile, the sheer height and width would erode the sense of space and openness and its design would appear incongruous and unsympathetic against the backdrop of No 11-13 and within the setting of the listed buildings.

Appeal B

15. The site for the proposal would be the footway to the front of 4 Market Place. Directly opposite No 4 is Market Cross, an open plaza with central listed memorial. No 4-6 Market Place is Grade II Listed, but contains a modern glazed shop front with the original façade evident at the upper floors. The setting of the listed building encompasses the form of the street pattern, relationship with surrounding buildings and the plaza to the front.
16. The street was particularly busy and commercial in nature, and there is an array of existing street furniture being close to the crossroads with Westgate and Kirkgate. Railings surround the corners, there are street lighting columns, traffic signals and signs, bollards and bins. The proposal would conspicuously and adversely contribute to the existing clutter. Added to this would be its modern, tall and substantially sized scale that would appear incongruous and unsympathetic in this street scene. Despite its position over the road, I also agree with the Council that it would detrimentally affect the traditional setting of the plaza, which is a unique feature of the CA.
17. Furthermore, whilst it would be located at the edge of the pavement, the proposal's size and design would erode the open setting of the listed building and its relationship with the plaza.

Appeal C

18. The site is within the eastern footway of John William Street, located to the front of Lion Chambers, a Grade II* Listed Building. Opposite the site is the Grade II* listed Britannia Buildings and St George's Square, a multi-use open space, which fronts Huddersfield Railway Station, a Grade I Listed Building. The majority of all other surrounding buildings are also listed. The wide street pattern and block layout forms part of the setting of the listed buildings as does St George's Square on approach to the Railway Station.
19. There is very little other street furniture in the area in this location, and this gives the footways and public areas a formal sense of space and openness that contributes towards the value and setting of the historic and well preserved character and townscape.
20. The proposal would be wholly inappropriate in this location, situated almost outside the main entrance to Lions Chambers. The conspicuously modern utilitarian design and large scale would be unsympathetic, harmful and incongruous; damaging and eroding the setting of the listed buildings and the character of the CA.

Appeal D

21. The site is on the edge of St George's Square to the front of the Grade I listed Huddersfield Railway Station, and the front of the Grade II* Listed Building 7 St George's Square. To the south of the application site is the Grade II* listed Britannia Buildings, to the north is the Grade I listed George Hotel. To the east of St George's Square, across John William Street, is Lion Chambers, another Grade II* Listed Building. The proposal would be sited within the setting of the Railway Station, given that St George's Square forms an open and formalised plaza on approach to the notable station façade.

22. In this location, the proposed kiosk would appear as an obtrusive and unplanned feature which would disrupt the open design of the public realm and multi use area, and the open, historic and well preserved approach to the railway station.
23. Moreover, it would also appear wholly inappropriate and incongruous. It would introduce an overly modern and conspicuous structure that would be harmful and unsympathetic. It would damage and erode the setting of the listed buildings and harm the character and appearance of the CA.

Appeal E

24. The site is on the wide expanse of footway along Market Street, located to the front of 19-23 Market Street, a large retail unit and Grade II Listed Building. The setting of the listed building includes the wide forecourt to the front. Opposite the site is a large relatively modern supermarket and multi storey car park development.
25. On the footway, there is existing street furniture, comprising planters, ticket machine, street lighting columns, railings, street cabinets, road signs and street lights along with a bus shelter opposite. However, this existing furniture is mostly located away from the frontage of the listed building such that the unhindered wide forecourt enables a sense of openness in which the building can be appreciated. This forms an important part of its setting.
26. As a result of the proposed siting, the modern scale and design of the proposal would interrupt this open expanse of footway and this would harmfully affect the setting of the listed building and cause harm to the character and appearance of the CA. Furthermore, despite most of the existing street furniture being located to the side of the building, the large and substantial size of the proposal would be conspicuous, contributing to street clutter in the area.

Appeal F

27. The site is located on a pedestrianised commercial street. The communication hub would be sited outside 25-27 New Street, a retail store with a modern shop front and dilapidated first floor appearance. Directly outside the store is a set of rubbish bins and there is other street furniture in the locality, such as bollards, A-boards, seats, planters and street lighting columns.
28. The adjoining building to the south, 29-35 New Street is Grade II Listed. Its setting comprises the area to the front of the buildings given its formal relationship with the street. Projecting from it is a glazed single storey canopy into Market Avenue along with seating to either side.
29. Whilst there is no coherence to the existing street furniture, the existing street is wide and it does not appear overly cluttered, such that the proposal would not adversely add to visual clutter. Furthermore, the location is less sensitive than the other appeals; and given the width of the pedestrianised street, the scale would not appear overly conspicuous or dominant.
30. Therefore, in this location, the proposal would have an acceptable effect upon the setting of the listed building and the character and appearance of the CA.

Conclusion for Appeals A, B, C, D and E

31. The Framework states that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The harm to the CA and the setting of the listed buildings would be less than substantial. The Framework details that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
32. Each proposal would support the expansion of electronic communications networks. They would also afford access for wheelchair and mobility scooters and provide public access to a payphone along with a digital touch screen to enable access to the internet and Council webpage. Whilst all these matters would represent public benefits, these would not outweigh the harm I have identified in each appeal.
33. Consequently, the siting and appearance of the communication hub in Appeals A, B, C, D and E would have an unacceptable and harmful effect upon the character and appearance of the area, failing to preserve or enhance the CA or preserving the setting of the listed buildings. Insofar as they are a material consideration, this would be contrary to the design aims of Policies LP24 (a) and LP35 (3. a & b) of the Kirklees Local Plan and Paragraphs 127 and 190 of the Framework.
34. For the reasons set out above, I conclude that the Appeals A, B, C, D and E should be dismissed.

Conclusion for Appeal F

35. The siting and appearance of the communication hub in Appeal F would have an acceptable effect upon the character and appearance of the area, preserving the CA and the setting of the nearby listed building. Insofar as they are a material consideration, this would be compliant with the design aims of Policies LP24 (a) and LP35 (3. a & b) of the Kirklees Local Plan and Paragraphs 127 and 190 of the Framework.
36. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.
37. For the reasons set out above, I conclude that Appeal F should be allowed.

Katie McDonald

INSPECTOR

Appeal Decision

Site visit made on 29 October 2019 by C McDonagh BA (Hons), MA

by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2019

Appeal Ref: APP/Z4718/D/19/3235511

Medina, Oldfield Road, Honley, Holmfirth, HD9 6RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Stewart Horn against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/62/91096/W, dated 1 April 2019, was refused by notice dated 29 May 2019.
 - The development proposed is erection of detached garage.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issues for consideration in this appeal are as follows:
 - Whether the proposed development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the development plan policy;
 - The effect of the proposal on the openness of the Green Belt; and
 - If the development would be inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons for the recommendation

Whether inappropriate development in the Green Belt

4. The appeal site comprises an extended semi-detached dwelling known as Medina, which is of two-storey, stone-built appearance. The property has a driveway to the side, along with front and rear gardens which contain outbuildings. The site lies within the Green Belt adjacent to the open countryside.

5. The proposal entails the erection of a detached garage to the side of the dwelling. It would be built in the approximate location of a recently dismantled garage, with materials proposed to match those of the existing dwelling. It is understood the works are required to replace the former garage due to its poor condition and a need for outside storage.
6. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraphs 145 and 146 of the National Planning Policy Framework (the Framework) set out the forms of development that are not considered inappropriate within the Green Belt. These include part c), *the extension or alteration of a building provided that it does not result in disproportionate addition over and above the size of the original building*.
7. What constitutes a disproportionate addition is not defined within the Framework nor within Policy LP57 of the Kirklees Local Plan Strategy and Policies (LP). An assessment of whether the proposed extensions would be 'disproportionate' in the context of paragraph 145 is therefore a matter of planning judgement.
8. Permission was granted relatively recently for a substantial two-storey side and single storey rear extension¹. Although I have no details of this application, I am informed through the officer report that the extension constituted an increase of 51% over the original dwelling. The Council further state the footprint of the proposed garage would be 50% of the footprint of the host property, as extended, which is not disputed by the appellant. Based on all I have seen and read, there is no reason for me to disagree.
9. Based on these figures, the proposed garage would represent a significant increase in the apparent volume of the original building when taking into account the cumulative increases. I note the appellant considers the extension should be judged in terms of its increase in scale against the house as it sits today. However, both the Framework and LP Policy LP57 make clear that the proposed development must be assessed in the context of the original building. As such, the garage must be judged alongside the already permitted extension in order to determine whether it comprises a disproportionate addition.
10. Consequently, comparing the original dwelling to the dwelling that would result if the proposal were to go ahead, the outcome would be disproportionate. It would therefore be inappropriate development, which according to paragraph 143 of the Framework is, by definition, harmful to the Green Belt. The proposal would also be contrary to Policy LP57 of the LP, the aims of which align closely with the Framework with regards to maintain the qualities of the Green Belt.

Openness of the Green Belt

11. The Framework indicates that openness is an essential characteristic of the Green Belt. The development would significantly increase the scale and mass of the dwelling. As a result, in spatial terms, the openness of the Green Belt would be reduced.
12. Whilst I accept that the garage would replace a similar structure and some outbuildings, and that these collective footprints may be similar, the earlier permission for the extensions was granted on the basis of a condition which

¹ Application Ref: 2017/90385

required these structures, including the previous garage, to be removed, to ensure the openness of the Green Belt is preserved. As such, allowing the erection of new buildings would further reduce openness of the Green Belt when viewed cumulatively alongside the existing side extension. Although in isolation the loss of openness would be limited, nonetheless, there would be degree of harm arising from this, in addition to that arising from the inappropriate nature of the development.

Other considerations

13. The Framework states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
14. The supporting information submitted with the initial planning application indicates the garage would be used to store classic cars among general household items. This is a private benefit of the proposal which attracts limited weight in favour of the proposal.
15. I noted on the site visit that neighbouring properties vary in terms of size and scale and that some have been extended. However, the fact that a neighbouring property is larger in scale than the appeal dwelling, or that the appeal dwelling was small relative to its plot prior to the construction of the two-storey extension, does not make the proposed extension acceptable in terms of impact on the Green Belt. I can only deal with the proposal on its own merits in the light of current national and local policy, both of which are clear in setting out what is considered inappropriate in the Green Belt through both paragraph 145 of the Framework and LP57 of the LP.
16. I appreciate that the garage has been designed in accordance with permitted development limits in terms of its scale. Further to this, the garage would be partially sunk into the ground to reduce its impact and would be constructed in materials to match those of the host dwelling. However, permitted development rights were removed with regards to outbuildings at this property through a condition attached to the permission for the erection of the two-storey side extension. As such, despite the sensitive approach to the designing of the garage, this carries limited weight in the decision-making process.
17. The Council has raised no objection to the development on the basis of its effect on the character and appearance of the building or wider area. In addition, it considers the proposal would not harm the living conditions of other nearby residents or highway safety. From what I have seen and read I have no reason to come to a different conclusion in this regard. Furthermore, there are no neighbour objections or opposition from the Parish Council. However, these are neutral matters rather than carrying weight in favour of the scheme.
18. I note the appellant is willing to negotiate in terms of the floor area and height of the proposal in an attempt to reach a compromise which would allow the development to proceed. However, this is a matter for the Council. I can only determine the appeal on the basis of the plans on which the Council made its decision.
19. I acknowledge the appellant believes there were difficulties in communicating with the Council during the application period. However, these are not relevant

matters for the appeal process and in determining the appeals I have only had regard to the planning merits of the proposals. Furthermore, while larger housing developments may have been approved in the Council area on greenfield land, these are assessed differently to a household scale development in the Green Belt.

Whether very special circumstances necessary to justify the proposal exist

20. To conclude, the appeal proposal would be inappropriate development in the Green Belt, which would, by definition, be harmful to the Green Belt. It would also cause limited harm to the openness of the Green Belt. The Framework requires that substantial weight is given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
21. Despite having regard to all the other considerations put before me, I consider that taken together, the factors cited in its favour do not clearly outweigh the harm the scheme would cause. Consequently, very special circumstances do not exist, and the proposal would conflict with the Framework.

Conclusion

22. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

Recommendation

23. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

C McDonagh

APPEAL PLANNING OFFICER

Inspector's Decision

24. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

S Ashworth

INSPECTOR

Appeal Decision

Site visit made on 25 November 2019

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2019

Appeal Ref: APP/Z4718/D/19/3236930

56 Upper Clough, Linthwaite, Huddersfield HD7 5PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Gareth Pickering against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/62/91503/W, dated 2 May 2019, was refused by notice dated 28 June 2019.
 - The development proposed is the erection of a single and two storey extension to rear of house and demolition of existing garage.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

Main Issue

3. The main issue in this appeal is whether the proposed development would preserve or enhance the character or appearance of the Linthwaite Conservation Area.

Reasons

4. The appeal property is positioned within a terrace located in the Linthwaite Conservation Area (CA). Within this part of the CA the age, architectural interest and repetition of the terraced housing appears, to me, to be an important component of its significance.
5. The proposed development would result in the removal of a single storey extension and flat roof garage which projects substantially to the rear. The proposed replacement would not project as far as the existing extension. However, it would be both wider and taller and would, in my view, be a disproportionate addition to the original building.

6. The appellant has planning permission for a smaller extension which would act as a fallback and could be built by the appellant. Moreover, there are a variety of other extensions on the rear elevation of the terrace group. Be that as it may, neither the approved extension or others in the terrace group are as substantial as the proposal before me now. There are also several large detached buildings to the rear of the terrace group with garages on the ground floor. However, these are visually divorced from the terrace and are not seen as physical extensions to the group unlike the proposal before me. In any case, I have considered the appeal proposal on its own merits.
7. The proposal would, in my view, appear as an overly dominant, unsympathetic addition which would have a harmful effect on the appearance of the rear of the host property and terrace group. Due to its rear location it would not be appreciated from wider public views within the CA. However, it would be seen from private views from other properties and from the rear access and parking area. Even cumulative and incremental localised changes of this kind can erode the character and quality of an area. As such, the proposal would not preserve or enhance the character or appearance of the Linthwaite CA.
8. Although in the context of paragraph 196 of the National Planning Policy Framework (the Framework), the resulting harm to the CA would be less than substantial. Any harm to the CA is a matter that attracts great weight, having regard to paragraph 193 of the Framework and the statutory duty to preserve or enhance CA's. In accordance with paragraph 196 of the Framework I must balance that less than substantial harm against the public benefits of the proposal.
9. I accept that the appellant is seeking to make an effective use of an existing dwelling, an objective which is encouraged by the Framework. I understand that extending the property might meet the appellant's need for increased accommodation. I agree with the appellant that the existing built form already projects substantially and unsympathetically to the rear of the original property. Its removal would therefore be a public benefit.
10. However, the existing extension is single storey and narrower than the proposal before me. As such, it does not dominate to the same extent as the proposal would. I therefore afford these benefits limited weight as the benefits to the public would be low. As such, I am not persuaded that these benefits outweigh the harm to the character and appearance of the property and the Linthwaite CA. Accordingly, the proposal would conflict with the requirements of the Framework and with policies LP24 and LP35 of the Kirklees Local Plan Strategy and Policies adopted 2019 which are concerned with the character and appearance of developments and, where relevant, developments within CA's.

Conclusion

11. I have taken account of all the other matters raised including the benefits of the proposed extension. However, none changes the balance of these findings and harm I have identified to the character and appearance of the Linthwaite CA. I therefore conclude that the appeal should be dismissed.

Robert Walker

INSPECTOR



Appeal Decision

Site visit made on 26 November 2019 by L Wilson BA (Hons) MA

Decision by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/Z4718/D/19/3237184

Brigsteer, 402 Birkby Road, Birkby, Huddersfield, HD2 2DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Shahzad Akhtar against the decision of Kirklees Metropolitan Council.
 - The application Ref 2019/62/91842/W, dated 21 June 2019, was refused by notice dated 16 August 2019.
 - The development proposed is the erection of a garage.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. The appellant stated on the appeal form that the proposed floor space of the garage would be 31 square metres. The appellant has confirmed that this is incorrect and that the proposed garage would measure 8.5 x 6.9 metres with a floor space of 58.65 square metres.

Main Issue

4. The effect of the proposed garage on the character and appearance of the street scene.

Reasons for the Recommendation

5. Brigsteer is a relatively new, substantial detached dwelling which has been extended. The appeal site is located next to the Church of Jesus Christ of Latter-Day Saints. Within the street scene are mainly large detached two-storey dwellings, set back from the highway, enclosed by high boundary walls and hedges.
6. Brigsteer sits higher than the highway and although the boundary treatment, namely the fence, hedge and retaining wall, partially screen the site, the first floor is particularly visible. The Council states that Brigsteer's porch has an overall height of approximately 3.7 metres which has not been disputed by the

appellant. This provides a useful comparison as the garage would have an overall height of approximately 4.3m.

7. The appellant has submitted massing images to demonstrate that the garage would not be seen from the highway. At my site visit, I observed that a greater proportion of the dwelling is visible from Birkby Road than what is shown on the massing images. Therefore, I am not convinced that they show a true reflection of the site. Furthermore, they only show the site from one viewpoint.
8. It is understood that the proposal has been amended to reduce its impact upon Birkby Road, and a planning officer had implied that a standard double garage would be acceptable. The appellant has calculated the percentage plot coverage in comparison to No 408. However, whilst the garage would not be disproportionate to the size of the plot, it would be very large with considerable bulk, and would be situated to the south eastern corner of the site, forwards of the host property. A drawing showing the finished floor levels of the garage has not been included and therefore I am not satisfied that the existing or proposed boundary treatment would screen the garage because of its width, height and siting. Accordingly, given my misgivings regarding the massing images based on my observations on site, I am of the view that the garage would be harmful to the character and appearance of the street scene due to its scale and massing.
9. It has been drawn to my attention that the site is subject to a Compulsory Purchase Order (CPO). I have had regard to the submitted drawings and the appellant's statement which detail the impact of the highway improvements upon the scheme, including new boundary treatment. However, whether the CPO goes ahead or not, the proposal would result in a dominant domestic building sited adjacent to the highway which does not reflect the character and appearance of the area.
10. I acknowledge that there are large buildings within the street scene, including the church and Maple Garden Flats. These buildings are set back from the highway so their impact upon the street scene is limited. Whereas the scheme would be seen as a large, prominent structure within the curtilage of a residential property.
11. The appellant has highlighted other structures along Birkby Road which they consider to be similar to the proposal. I observed on my site visit that the majority of dwellings along Birkby Road are stepped back from the highway and do not have structures adjacent to the highway. There are limited examples of properties with a carport and garages adjacent to the highway. However, these are orientated so their depth is adjacent to the highway rather than the width in contrast to that proposed. As a result, these structures do not appear dominant within the street scene. Similarly, whilst the site is not within a conservation area, the use of matching materials would assist in integrating the garage within the street and the proposal would not adversely impact residential amenity or highway safety, these considerations do not overcome the adverse effects outlined above.
12. For these reasons, I find that the proposed development would be visually harmful to the character and appearance of the street scene. Consequently, the scheme would conflict with Policy LP24(a) of the Kirklees Local Plan: Strategy and Policies (2019) and the National Planning Policy Framework. Collectively

these seek, amongst other matters, to promote good design and prevent development which harms the character and appearance of areas.

Other Matters

13. The site is located close to the Edgerton Conservation Area (CA). The highway provides a clear separation between the site and CA. Therefore, I too agree with the Council that the proposal would preserve the setting of the CA.
14. The appellant highlights that the accommodation would meet the needs of their family. The Planning Practice Guidance sets out that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission¹. Personal circumstances rarely outweigh general planning considerations as the occupants of a dwelling can change whereas the development would be permanent.
15. I must have due regard to the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, which requires me to consider the need to eliminate unlawful discrimination, to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Protected characteristics include a person's disability or age. I do not doubt that the proposals would help accommodate the needs of the family. Nonetheless, this must be balanced with the significant adverse impacts of the proposal identified earlier.
16. In support of the appeal my attention has been drawn to other developments in the vicinity. I do not have the full details of these cases and so cannot determine whether the circumstances are comparable to the scheme before me.
17. Support from residents, a tree officer and highways officer are not considerations which outweigh the harm identified above. Similarly, I recognise that a number of the objections submitted are from the same households and I have had regard only to the planning merits of the case. The investigation regarding a Councillor's objection is a matter for the Council and has little bearing on the planning merits of the case.
18. Having carefully weighed the potential benefits of the scheme, I therefore consider that dismissal of the appeal is a proportionate and necessary response having regard to the legitimate and well established planning objective of protecting the character or appearance of an area.

Conclusion and Recommendation

19. For the reasons given above I recommend that the appeal should be dismissed.

L M Wilson

APPEALS PLANNING OFFICER

¹ Paragraph: 015 Reference ID: 21a-015-20140306

Inspector's Decision

20. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree and conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

Appeal Decision

Site visit made on 3 December 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Appeal Ref: APP/Z4718/W/19/3238001

Land at Kiln Hill, Slaithwaite, Huddersfield HD7 5JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr C Pogson against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/60/90372/W, dated 06 February 2019, was refused by notice dated 03 April 2019.
 - The development proposed is residential development (outline).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal relates to an outline proposal with all matters reserved for future consideration. Nevertheless, an indicative plan (ref 17-153-01C) was submitted to illustrate how 2 dwellings could be accommodated at this site in order to demonstrate that an acceptable scheme was capable of being advanced at the reserved matters stage. Notwithstanding the illustrative nature of the plan, in the absence of any other plans to demonstrate an alternative layout, I have therefore had regard to it.

Main Issues

3. The main issues are:
 - i) Whether the proposed development would preserve or enhance the Slaithwaite Conservation Area; and
 - ii) The effects of the proposed development on the living conditions of the occupiers of neighbouring residential properties and future occupiers.

Reasons

Character and appearance

4. The appeal site is a small area of hard surfaced land used for parking to the rear of a terrace of properties, including commercial premises, which front onto Manchester Road. The site is between 7 Kiln Hill and an industrial unit in a mixed residential and commercial area. It is within the Slaithwaite Conservation Area (the CA), the significance of which derives from the 19th century stone-built mill town with significant earlier buildings. The CA includes the historic mill buildings clustered around the River Colne and the canal

together with associated historic residential areas, which are typically formed from modest terraced properties in matching styles and materials. In this context, the vacant appeal site to the rear of the commercial premises makes a negative contribution to the significance of the CA.

5. The indicative plan illustrates a pair of 3 storey semi-detached dwellings with integral garages, with reconstituted coursed stone walls, concrete roof tiles, uPVC windows and composite doors. The building would be located immediately adjacent to the rear boundary of the site and there would be off-street parking to the front. There would be no functional private outdoor space.
6. The nearby terraced properties on Manchester Road and Kiln Kill have 3 and 4 storey rear elevations. However, this is a result of their hillside location and from the front they are nevertheless 2 storey dwellings. In contrast, the appeal building would be on relatively flat land, resulting in an isolated and tall building that would not be in keeping with the nearby terraced built form. Moreover, by virtue of its overtly modern design and materials, it would not relate well to the surrounding historic built environment. Notwithstanding its back lane location, it would be visible from the surrounding area. Consequently, it would be a conspicuous and uncharacteristic form of development that would not make a positive contribution to local distinctiveness or place making.
7. Paragraph 184 of the National Planning Policy Framework (the Framework) emphasizes that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. In this regard, I have a duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
8. I appreciate that the scheme is in outline and the detailed layout and appearance would be reserved matters. However, the proposal does not demonstrate that it would preserve or enhance the character or appearance of the designated heritage asset. Moreover, no alternative plans have been provided to demonstrate any alternative scheme that would make a neutral or positive contribution to the townscape. Therefore, taking into account the importance of the heritage asset, I must adopt a precautionary approach in determining this appeal.
9. However, the appeal scheme would be modest in the context of the CA as a whole. Consequently, it would result in less than substantial harm to the significance of the CA as a designated heritage asset. Paragraph 193 of the Framework is clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
10. Paragraph 196 of the Framework states that where a development proposal would lead to less than substantial harm to the significance of the heritage asset, that harm should be weighed against the public benefits of the proposals. The Planning Practice Guidance sets out that public benefits could be anything that delivers economic, social or environmental objectives as described in the Framework, and that they should be a benefit to the public at large and not just be a private benefit.

11. In this regard, the scheme would primarily deliver private benefits. It would make a minimal contribution to the delivery of housing and there would be similarly minimal economic and social benefits associated with the construction and occupation of 2 small dwellings in this location. On that basis, the public benefits would not outweigh the harm to the CA and the proposal would therefore conflict with the Framework.
12. By virtue of the harm to the CA, the proposal would conflict with the development plan including Policy LP24 of the Kirklees Local Plan Strategy and Policies Adopted February 2019 (the LP). This requires, among other things, that proposals should respect and enhance the character of the townscape and heritage assets.

Living conditions

13. The submitted plan indicates a 3 storey building in close proximity to the rear elevations of properties on Manchester Road which are in residential use, with the exception of the commercial premises. In the absence of evidence to the contrary, I must take a precautionary approach and assume that at least some of the windows in the facing rear elevations serve habitable rooms.
14. The indicative plan illustrates that the proposal would have rear-facing windows at both first and second floor levels. Some of these windows would serve bathrooms. However, the kitchen windows would allow relatively close overlooking between the appeal scheme and the facing rear windows of the neighbouring properties. Consequently, the proposal would result in a loss of privacy. Furthermore, by virtue of its close proximity and height, the proposal would be an overbearing form of development and it would result in a poor outlook from the rear habitable room windows of the neighbouring properties.
15. The proposal would be set at an oblique angle relative to the adjacent property, 7 Kiln Hill, which is in a slightly elevated position and separated from the appeal site by a walled brook. Although the plans suggest that there would be no direct overlooking between the properties, by virtue of its height and proximity, the 3 storey blank gable end would be likely to appear overbearing and it would diminish the outlook from the rear of No 7.
16. The proposal would not provide any functional private outdoor space for future occupiers. I appreciate that traditional terraced properties in the area do not have large gardens. However, they generally have some outdoor space to meet the basic needs of occupiers. In this case, in the absence of outdoor space, the proposed modern dwellings would fail to provide an adequate standard of living conditions such as future occupiers might reasonably expect. In this regard, the presence of public open space elsewhere in the area does not meet the reasonable basic amenity needs of future occupiers.
17. I acknowledge that in the absence of detailed plans, it is not possible to fully consider the impacts of any future scheme on neighbouring or future occupiers. However, the evidence before me does not demonstrate that the proposal could be accommodated at this site without adverse impacts on the living conditions of residential occupiers. Moreover, given the constraints of the site, there is nothing before me to demonstrate that an alternative scheme could be brought forward which would not conflict with the development plan.

18. Therefore, the appeal proposal fails to demonstrate that significant adverse impacts on the living conditions of the occupiers of neighbouring properties would be avoided, with particular regard to outlook and overlooking. It has also not been demonstrated that the proposal would provide adequate living conditions for future occupiers, with particular regard to overlooking, privacy and private outdoor space. The proposal would conflict with Policy LP24 of the LP which requires, among other things, that development provides a high standard of amenity for future and neighbouring occupiers, including through maintaining appropriate distances between buildings. It would also conflict with the policies in the Framework that relate to health and well-being and standards of residential amenity.

Other Matters

19. The appeal site is in a suitable location for residential development, having regard to the accessibility of services and facilities including sustainable forms of transport. While this would be a small benefit, there are likely to be other equally accessible sites where new residential development could be delivered without conflict with the development plan. This is not therefore a matter that outweighs the harm that I have found.

Conclusion

20. I have concluded that the scheme would conflict with the development plan and there are no other considerations that outweigh that conflict. For this reason, the appeal should be dismissed.

Sarah Manchester

INSPECTOR



Appeal Decision

Site visit made on 18 September 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/Z4718/W/19/3232185

Land adjacent to Thick Hollins Road, Meltham, Huddersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Turner Brothers Farm against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/93112/W, dated 23 September 2018, was refused by notice dated 6 March 2019.
 - The development proposed is the use of land for the siting of 4 log cabins to be used as holiday lets.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The site visit was unaccompanied.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies and the effect on the openness of the Green Belt;
 - whether the proposal would result in other harm, namely development in an unsuitable location given the range of transport options available to access local services; and
 - would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal?

Reasons

The site and proposal

4. The site is located a short distance from Thick Hollins Road, to the south of Meltham. The site is within open countryside and an area of maturing plantation. Access to the site would be gained via a new access from Thick Hollins Road, which is subject to a separate approval.

5. The proposal is to site 4 log cabins within the plantation for tourist accommodation. The log cabins would be modest in appearance with timber walls, low pitched roofs and range in size between 3 and 4 bedrooms.

Inappropriate development and effect on openness

6. The site is located within the Green Belt. Paragraph 145 of the Framework sets out the exceptions under which a new building should be regarded as not comprising inappropriate development. Policy LP10 of the Kirklees Local Plan Strategy and Policies¹ (the Local Plan) does not repeat the Framework exceptions but is clear that in all cases where development is proposed in the Green Belt, regard must be had to national planning policies.
7. The Framework states that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of green belts are their openness and their permanence.
8. It is not disputed that the proposal comprises inappropriate development. Although the proposed log cabins would be partially screened by the existing planting, which would be likely increase over say the next 5 – 10 years as the trees mature further, there would be a significant impact on the openness of the Green Belt in both visual and spatial terms. This would inevitably arise from the development, given the size and layout of the 4 log cabins which would significantly reduce the openness of this part of the Green Belt by introducing buildings.
9. The increased use of the access road would have an effect on openness. At the present time the approved access would permit entry to the agricultural land and the woodland for maintenance purposes. Were the appeal proposal to proceed it would allow the comings and goings of visitors using the log cabins. It is reasonable to assume that this activity would be greater than the agriculture and woodland use alone, and would require the provision of visibility splays on the main road, all with a consequent increased effect on openness.
10. The parking of visitor cars, and the normal outside paraphernalia such as barbecues and washing lines would, in addition to the cabins themselves, further erode the sense of openness at the site to a significant degree.
11. The proposal would therefore reduce openness and constitute inappropriate development, which the Framework establishes should not be approved except in very special circumstances. It would therefore also conflict with Policy LP10 of the Local Plan which requires proposals in the Green Belt to comply with national policy.

Any other harm

12. The site is not well served by public transport and it is likely that visitors to the proposed accommodation would need to use the private car for most journeys, even though some trips would be possible by other modes, for example cycling.
13. The relevant Local Plan policies are LP3 – Location of new development and LP10 – Supporting the rural economy. It is clear from the justification for Policy

¹ Adopted 27 February 2019

LP3 that it relates principally to proposals for employment and housing development, rather than tourism related accommodation. In the case of LP10, the policy justification states that it is not intended to prevent businesses, or in the case of farm diversification tourist related developments, from locating in the Green Belt where there is genuine need. Whilst the appellant states that it would be difficult to find another site not within the Green Belt for the type of development, I have no evidence before me to demonstrate that this would be impossible, therefore I do not find that genuine need has been proven.

14. Were the proposal to be for open market housing, the site would be an unsuitable location due to the lack of transport options other than using the private car. However, it is likely that the travel patterns of tourists would be very different to residents, and I am not persuaded that in principle the site would be unsuitable solely due to the limited range of transport options to access local services.

Other Considerations

15. The Framework² seeks to support a prosperous rural economy, including the development of tourism in suitable locations that respect countryside character. The proposal would allow diversification of the appellants' farm business, utilising land that currently has no usefulness for agriculture. It could also be argued that use for tourism accommodation would represent a more efficient use of the land and that the form of development proposed, log cabins, would be sympathetic to the woodland setting.
16. Tourist accommodation would be provided in an attractive countryside location and relatively close to the villages of Holmfirth and Meltham and close to the Peak District National Park. There is no good reason to take the view that the proposed accommodation would not be successful in attracting visitors although the appellants have not submitted a business plan or assessment of the demand for such accommodation in support of the proposal.
17. The opportunities to provide the form of development within the area, but not within the Green Belt, may be limited, although I am not able to say that there are no suitable sites within the settlements of Meltham or Holmfirth.
18. Furthermore, the proposed tourist accommodation would bring trade to local businesses from visitors, helping to support village centres and facilities.
19. The Council has recently consented development at the Holmfirth Winery, within the Green Belt which it is suggested has a significant effect on openness. I have no specific information on the case, however it is clear that it is a different type of development to the proposal.
20. Local Plan Policy LP10, in principle, is supportive of the development of tourist accommodation and farm diversification whilst recognising that where development is proposed in the Green Belt regard must also be had to both national and local planning policy which seeks to protect the Green Belt.

The Green Belt Balance and Conclusion

21. I have found that the proposal would be inappropriate development in the Green Belt and that it would erode the openness of the appeal site.

² National Planning Policy Framework February 2019 paragraph 83

22. The Framework sets out that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness or any other harm resulting from the proposal, is clearly outweighed by other considerations.
23. In the current case the considerations advanced in support of the scheme carry significant weight in its favour. There would be some economic benefits arising out of the proposed development, to which I attach moderate weight. However, these would not clearly outweigh its Green Belt harms, matters which attract substantial weight. For these reasons, it has not been demonstrated that very special circumstances exist which would justify the proposed development.
24. In addition, I have found conflict with the Framework and the aims of Policy LP10 of the Kirklees Local plan which taken together, and amongst other matters seek to protect the openness and permanence of the Green Belt.
25. No material considerations justify a decision other than in accordance with the development plan, with which the proposal would conflict. Accordingly, for the reasons set out above, and the appeal is dismissed.

Tim Wheeler

INSPECTOR

Appeal Decision

Site visit made on 10 December 2019

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Appeal Ref: APP/Z4718/W/19/3237550

12 Clough Head Farm, Clough Head, Slaithwaite Gate, Bolster Moor, Huddersfield HD7 4NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Coates against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/93768/W, dated 12 November 2018, was refused by notice dated 16 July 2019.
 - The development proposed is alterations and extensions to agricultural building to form dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development given on the planning application form and appeal form differs. I have used the description from the planning appeal form which more accurately describes the proposal.
3. The appeal site was the subject of a recent proposal which was dismissed on appeal¹ (the previous appeal). In determining the previous appeal, the Inspector was not satisfied that the building was of substantial construction and capable of conversion as proposed. The Inspector subsequently dismissed the appeal concluding that very special circumstances had not been demonstrated. The proposal before me is almost identical to the scheme proposed under the previous appeal. The main difference is that the current proposal has been submitted with a Structural Report and the adjacent agricultural building is proposed to be removed.

Main Issues

4. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt; and

¹ Appeal Ref: APP/Z4718/W/18/3197747

- if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

5. The appeal building is a timber clad agricultural building situated in the Green Belt. A second, somewhat dilapidated, agricultural building is positioned in close proximity and would be removed as part of the application. Paragraph 146 d) of the National Planning Policy Framework (the Framework) outlines that the re-use of buildings, provided that the buildings are of permanent and substantial construction are a form of development which are not inappropriate in the Green Belt. This is provided that the development preserves the openness, and does not conflict with the purposes, of including land within the Green Belt.
6. Criterion a) in Policy LP60 of the Kirklees Local Plan Strategy and Policies (LP) document adopted 2019 has similar wording to the Framework with respect to the building's structural integrity. The Council consider that the development of the building would be inappropriate within the Green Belt because it has not been demonstrated, to the satisfaction of the Council, that the existing building is sufficiently substantial to be converted. There is no dispute between the parties that the building is permanent.
7. The proposal seeks to retain the existing timber frame, timber floor beams, brickwork pillars, concrete block external walls, timber roof trusses and timber wall cladding. The proposals seek to replace the roof and the external walls would be boarded over with new timber boarding. A new lining wall would be constructed to create a cavity wall but would not require a foundation.
8. The Structural Report submitted with the application advises that the roof is supported on king post trusses spreading the load to the two side walls. However, there is no substantive evidence regarding the condition of the timber frame. Instead the report is based on a combination of an inspection and assumptions that the timbers and joints are in a good condition or that essential repairs would be undertaken as part of the scheme.
9. The appellant suggests that the introduction of new load bearing walls being built within the existing building envelope will decrease the loads. However, if such features are necessary then this would further question the capacity of the existing structure to be converted.
10. The external timber boarding is said to contribute to the building's structural integrity. However, there is no substantive evidence before me as to whether the over-boarding of new timbers would impact upon the structural integrity of the existing timber boarding.
11. Irrespective of whether strengthening works could be undertaken as part of the maintenance of the building or whether such works are defined as development or not, the provision of internal strengthening works to the timber frame is intrinsically linked to whether the building is capable of conversion as part of the proposal in this case.

12. There appears to be agreement between the Council and the appellant's structural engineer that in order to quantify and evidence the state of the timber frame, a specialist condition report would be needed. This would consider the proposed additional loading from an intermediate floor including all dead and live loadings. I recognise that the building has been used for storage of hay which may well be of a greater loading than the proposed domestic loading. Whilst such a conclusion may give some confidence to its structural integrity, it does not, in my view, overcome the need to substantiate and provide quantifiable evidence.
13. Given that the roof is to be replaced and a new gable wall is to be erected as part of the proposal it is necessary to ensure that remaining structural elements are retained so that incrementally the works required to convert the building to a dwelling do not amount to a substantial reconstruction.
14. Based on the evidence before me, I cannot therefore be satisfied that the building is of substantial construction. The proposal would, therefore, fail to fall within the exception listed in paragraph 146 d) of the Framework which results in the proposal being inappropriate development in the Green Belt. It would also, therefore, conflict with Policy LP60 of the LP which normally accepts the re-use and conversion of buildings in the Green Belt where the building is of permanent and substantial construction.

Openness

15. A fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to keep land permanently open. This openness is an essential characteristic of the Green Belt and has a spatial and visual aspect.
16. The alterations proposed to the barn would result in a shortening of one end of the building and a small veranda and canopy. In determining the previous appeal, the Inspector concluded that the proposal would have a neutral effect on openness. As the current proposal also incorporates the loss of the other agricultural building, I conclude that overall there would be no impact on openness. It would therefore not undermine the purposes of the Green Belt.

Other Considerations

17. Paragraph 144 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.
18. The proposal would deliver an additional dwelling and therefore have some economic and social benefits with local employment likely to be used for the conversion work. A net gain of a single dwelling would only have a limited impact in the context of the overall housing supply, and I attach limited weight to the benefits in that regard.
19. The proposal would re-use a building, which would have environmental benefits and I note that the dwelling would incorporate sustainable features such as energy saving lights. However local and national planning policy would expect development to be built sustainably and that is not a matter that attracts substantial weight over and above what would normally be expected.
20. I recognise that there are bus connections to Huddersfield close to the appeal site. However, it is likely that there will be a general reliance on private car

trips given the location of the appeal site in comparison to services and facilities in the area.

Other Matters

21. The Council does not consider that the proposal would harm the setting of any listed building in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The nearest listed building is to the north of the appeal site on an elevated position. Although the listed building has windows facing toward the appeal site, the proposal has been designed to maintain its existing agricultural vernacular and, in this respect, it would sit comfortably in the landscape. Although visible, it would not cause harm to the setting of this listed building.

Conclusion

22. As explained above, I cannot be satisfied that the building is of substantial construction. The proposal would, therefore, fail to fall within the exceptions listed in paragraph 146 d) of the Framework which results in the proposal being inappropriate development in the Green Belt. It would also, therefore, conflict with Policy LP60 of the LP.
23. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt. Substantial weight should be given to the harm to the Green Belt by reason of inappropriateness. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
24. No other harms have been identified in this case. I give only limited weight to the benefits of this single dwelling and I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
25. I therefore conclude that for the reasons above, and having regard to all matters before me, the appeal should be dismissed.

Robert Walker

INSPECTOR



Appeal Decision

Site visit made on 17 December 2019

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Appeal Ref: APP/Z4718/W/19/3238283

7 East Street, Jackson Bridge, Holmfirth HD9 1HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nigel Heeley against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/62/91350/W, dated 13 April 2019, was refused by notice dated 20 June 2019.
 - The development proposed is the construction of a detached dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The plans submitted with the planning application have formed the basis of my consideration of the appeal. However, the appellant has submitted a block plan showing parking for No 7 East Street. This seeks to address the Council's concerns regarding the parking arrangements for the proposed development.
3. I am conscious that the appeal process should not be used as a means to progress alternatives to a scheme that has been refused. However, where amendments are proposed, regard should be had to whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity.
4. In this case, the amendments would alter the external layout of the site to accommodate a parking space for No 7 East Street. This relates to one of the reasons for refusal, but it has not been subject to public consultation through the application process. Taking this into account, I cannot be certain that there would not be any prejudice to any party should I accept the amended plan at this stage. As such, in the interests of fairness and natural justice, I have considered the appeal based on the plans which formed the basis of the Council's decision.

Main Issues

5. The main issues in this appeal are:
 - Whether or not the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;

- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on the use of the public house garden and the quality of the community facility; and
- The effect of the proposed access and parking arrangements on highway and pedestrian safety;

Reasons

Inappropriate development

6. Paragraph 143 of the Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There are exceptions to this general restriction and paragraph 145 (e) advises that the construction of new buildings comprising limited infilling in villages should not be considered inappropriate development. Another of these exceptions is the redevelopment of previously developed land (paragraph 145 (g)).
7. Policy LP59 of the Kirklees Local Plan Strategy and Policies (LP) adopted 2019 accepts some infilling on brownfield land in Green Belts subject to a number of criteria. The appeal site appears to form part of the garden associated with No 7 East Street in Jackson Bridge. The definition of brownfield sites or previously developed land in the Framework excludes land in built-up areas such as residential gardens. The appeal site is positioned with a Public House on the upper slope to the rear. It is located within Jackson Bridge and there are a number of houses to the east, south and west of the site. It is therefore, in my view, located within a built-up area and would not constitute previously developed land. As such, the proposal would not fall to be assessed against Policy LP59 of the LP or paragraph 145 (g) of the Framework.
8. The Council considers that Jackson Bridge is not a village for the purposes of paragraph 145 (e) of the Framework. However, neither the Framework nor the LP give a definition of what constitutes a village.
9. During the site visit I was able to observe 2 Public Houses, a bowls club and graveyard. These would all be within walking distance of the development proposed. Whilst the settlement may not have a defined core in terms of its layout, that is often the case for many villages, and it is not necessarily a decisive factor. Whilst I recognise that there are no shops or schools at Jackson Bridge, given the existing facilities and number of houses, I am satisfied that it can be considered a village for the purposes of paragraph 145 (e) of the Framework.
10. I recognise that the proposal may not be within a continuously built up frontage and is set back from East Street. However, it would be located close to the end of the row of housing to the east, the public house and its garden and other residential properties and their grounds to the west. Moreover, due to the size of the site and as a single residential dwelling is sought, it would, in my view, constitute limited infilling within the village of Jackson Bridge. It would therefore accord with paragraph 145 (e) of the Framework. As such the proposal would not be inappropriate development within the Green Belt.
11. As I have found that the proposal is not inappropriate development in the Green Belt and as no other potential harm to the Green Belt has been

identified, it is not necessary for me to consider whether any very special circumstances exist.

Character and appearance

12. Jackson Bridge is characterised by stone built, predominantly 2 and 3 storey properties often in terrace groups. No 9 East Street is a 3 storey property which steps down to No 8 and 7 which are 2 storey. They are built backing on to Sheffield Road which is on a higher ground level. East Street also slopes down to Hepworth Road, and due to a combination of the scale of properties and change in topography, the built form appears generally to step down with the slope.
13. The proposed dwelling would be detached from, but adjacent to, the end of a row of properties. It would appear significantly taller than No 7 and would fail to harmonise with the prevailing pattern of the built form as it steps down the slope. Moreover, the extent and style of the proposed windows on the western and southern elevation would contrast with the fenestration associated with the housing along East Street. As such, the combination of the scale and design would appear contrived in this location. I recognise that large openings are not uncommon in agricultural and industrial buildings within the area. However, the building's form and appearance would not reflect either of this type of building and as such this does not outweigh my concerns.
14. Whilst variation can add interest to an area, in my view, the proposal would fail to reflect the architectural vernacular of Jackson Bridge and in particular the housing along East Street. It is the resulting relationship of the proposed development within the immediate street scene which leads me to conclude that the proposal would appear as a discordant feature.
15. I therefore conclude that the proposal would result in harm to the character and appearance of the area. As such, the proposal would conflict with the requirements of Policy LP24 of the LP which seeks to achieve good design in developments.
16. Policy LP24 of the LP is consistent with the provisions of the Framework. I therefore conclude that the proposal would conflict with chapter 12 and in particular paragraphs 127 and 130 of the Framework which broadly seek to secure high quality design.

Public house

17. The proposal would be positioned close to the garden of the Red Lion Public House. This lies to the north of the appeal site on a higher ground level separated from the appeal site by the public right of way (PROW). The garden includes a range of seating areas and is an attractive space which I'm advised is used to host events such as live music on occasions.
18. The proposed house would be dominant from the garden, although it would be on the lower ground level and so the full scale of the property would not be fully appreciated. In this respect, although it would alter the view, I do not consider that it would appear oppressive from the higher ground level.
19. The proposal would be to the south of the garden and I have no substantive evidence regarding the extent of any overshadowing. Considering the orientation, height of the sun, location of the PROW in between, change in

topography and height of the proposed dwelling, any shadowing effect is not likely to be substantial overall.

20. There are no other neighbouring properties that have such a close relationship to the garden at present as the proposal would. Noise from the garden would likely be evident from within the proposed dwelling due to its height, close proximity to windows and lack of buffer. This would be particularly the case in the summer when the garden would be most intensively used and when the property is most likely to have its windows open.
21. Although the Council's Environment Services did not object, at such close proximity I consider that the proposal would result in an unacceptable level of noise and disturbance to the occupants of the proposed dwelling. This would in turn have an adverse impact on the use, function and enjoyment of the Public House garden and the quality of this community facility. It would subsequently conflict with the requirements of Policy LP48 of the LP which, amongst other things, supports development that protects or enhances the quality of existing community facilities.

Highway and pedestrian safety

22. The proposal incorporates an integral garage for the occupiers of the proposed property. However, it would result in the loss of a single parking space and garage. East Street has no parking restrictions in place. Many of the properties in the village appear to have no off-street parking and park on-street. Moreover, there is no substantive evidence before me as to whether there is an existing problem with the capacity of on-street parking.
23. At the time of the afternoon site visit there was limited on-street parking occurring along East Street or the wider village. Where there were parked vehicles, the carriageways were sufficiently wide to enable other vehicles to pass. I recognise that my site visit represented a snapshot in time and the level of parking would likely be different in the evenings and weekends. Moreover, the proposal would increase on-street parking as the existing parking space and garage would not be compensated for. However, I have no substantive evidence that this would result in an adverse effect on highway or pedestrian safety.
24. The existing garage and parking space at the appeal site means that vehicles either need to reverse in or out. East Street appeared to be a reasonably quiet road with vehicles not travelling at a high speed. There is no evidence before me that the existing parking layout has resulted in any highway or pedestrian safety issues. Although it has not been demonstrated whether it is possible to enter and exit in a forward gear, given the existing parking situation and the nature of East Street I am satisfied that the proposed parking arrangements would not have an adverse effect on highway or pedestrian safety.
25. A PROW passes the site boundary and access point and the Council's Highway's Officer requested further information during the application. However, it did not object on this basis and suggested that this information could be provided by conditions. Such information included, amongst others, details of refuse collection points and measures to protect the PROW during construction. As there is an existing parking space and garage, I do not consider that there would be a significant intensification of activity along the PROW from the proposed dwelling. Moreover, I consider that if I was minded to allow the

appeal, such details could be reasonably reserved by way of a condition and I note the Council's suggested conditions on this matter.

26. I therefore conclude on this matter that the proposed access and parking arrangements would not result in an adverse effect on highway or pedestrian safety. The proposal would therefore comply with Policies LP21 and LP22 of the LP which require, amongst other things, development to achieve satisfactory access and appropriate parking arrangements. The proposal would also comply with paragraph 109 of the Framework which seeks to ensure that development does not have an unacceptable impact on road safety.

Other Matters

27. The Council does not consider that the proposal would harm the setting of any listed building in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. I have no reason to disagree with this conclusion. Moreover, given my findings on the character and appearance of the area, it is the relationship with No 7 and the prevailing pattern and character of built form in the area that is of concern and not, the specific relationship to any other individual property in Jackson Bridge.
28. I recognise that the proposal would incorporate sustainable features such as a electric car charging point and would provide an additional home to the local housing market. However, planning policy expects housing to be built sustainably and that is not a matter that attracts substantial weight over and above what would normally be expected. Moreover, a net gain of a single dwelling would only have a limited impact in the context of the overall housing supply, and I attach limited weight to the benefit in that regard.
29. I have had regard to other matters raised including the effects on the living conditions of the future occupiers of the proposal and neighbouring properties, drainage, flood risk, loss of trees and any damage or disturbance during construction. However, as I am dismissing the appeal on other grounds, I have not pursued these matters further.

Conclusion

30. The proposal would represent limited infilling in a village and consequently would not be inappropriate development in the Green Belt. Moreover, I am satisfied that the proposed access and parking arrangements would not result in an adverse effect on highway or pedestrian safety. The proposal would not result in significant overshadowing of the adjacent Public House garden or appear overly oppressive from it.
31. However, the lack of harm in those respects and the limited benefit I afford to an additional residential unit does not outweigh the significant harm I have identified to the functioning of the Public House garden and harm to the character and appearance of the area.
32. For these reasons, and having had regard to all matters raised, the appeal is dismissed.

Robert Walker

INSPECTOR

Appeal Decision

Site visit made on 7 January 2020

by E Maund BA (Hons) MSc Dip UP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2020

Appeal Ref: APP/Z4718/W/3235295

Os 45-47 New Street Huddersfield HD1 2BQ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Infocus Public Networks Limited against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/91619, dated 15 May 2019, was refused by notice dated 8 July 2019.
 - The development proposed is the installation of a Communication Hub.
-

Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. In the interests of clarity and precision I have amended the description of development from that presented on the appeal form to that described by the Council in its report.
3. As an electronic communications code operator, the appellant benefits from deemed planning permission for development for the purpose 'of the operator's electronic communication network' under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. The appellant applied to the Council on that basis.
4. As the principle of development is established, considerations such as need for the hub are not a relevant matter. The Council determined that prior approval was required and refused. Accordingly, the main issue is set out below.

Main Issue(s)

5. The main issues in this case is the effect of the siting and appearance of the development on;
 - (a) the character and appearance of the Huddersfield Town Centre Conservation Area (HTCA);

- (b) the character and appearance of the surrounding area more generally; and
- (c) the setting of the adjacent Grade II Listed Building 42-48 New Street.

Reasons

6. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have taken account of the policies of the development plan and the Framework only in so far as they are a material consideration relevant to matters of siting and appearance. Those relevant are policies LP21, LP24(a), LP35 of the Kirklees Local Plan February 2019, which taken together are concerned with the effect of development on the appearance, highway safety and environment of Kirklees.
7. Paragraphs 91 and 92 of the Framework seek street layouts that allow for easy pedestrian and cycle connections, are safe and accessible, have the use of clear and legible pedestrian routes with layouts that encourage walking, and which plan positively for the shared use of public space. Paragraph 112 supports the development of communications infrastructure noting "it is essential for economic growth and social well-being." However, the Framework also refers to appropriate design, character and appearance and pedestrian movement in paragraph 127 seeking to ensure amongst other things that developments add to the quality of the area, are visually attractive, are sympathetic to the local character, establish a strong sense of place and create accessible places.
8. The hub is designed as a free-standing structure 2.6m high and 1.3m wide, with a total depth of 0.9m including the glass canopy. It would comprise of a mild steel casing, powder coated in metal chain grey with a glass canopy with solar panel on the roof. This would incorporate both a telephone, LCD touch screen and other means of electronic communications.

The character and appearance of HTCA

9. The site of the proposed hub is on part of the pedestrianised street in the centre of Huddersfield. New Street is a wide pedestrianised street lined by a mixture of retail and commercial properties typical of a town centre location. The position proposed for the hub is adjacent to a litter bin but set 3.4m from the façade of the front of the buildings on the eastern side of New Street, opposite the entrance to the Imperial Arcade.
10. In the vicinity of the proposed hub whilst there is a line of bollards running parallel with the front of the adjacent properties it has a feeling of spaciousness as street furniture is largely absent in this immediate locality which I consider is a positive factor in contributing to the character and appearance of this part of the HTCA. The proposed hub at 2.6m high and 1.3m wide would introduce a large structure into the street reducing this sense of openness and as a consequence detracting from the character of the area.
11. The introduction of the proposed hub in this location would fail to preserve the character and appearance of this part of the HTCA.

The character and appearance of the area more generally

12. I do not agree with the Council that the introduction of the hub in this location would create an unsightly degree of street clutter in this particular part of New Street as referred to above in this specific location there is a sense of spaciousness due to the lack of street furniture. To this extent it is not cluttered in my view, nevertheless the proposed development would introduce a further element of street furniture into the currently spacious vista which I consider harms the character and appearance of the street to the detriment of the character and appearance of Huddersfield New Street.

The setting of 42-48 New Street

13. The spaciousness of this part of the street currently allows uninterrupted views of the façade of the 42-48 New Street a Grade II Listed Building. Whilst the hub would be outside of this property it would be set some distance away towards the opposite side of the street and would not in my view be particularly noticeable when viewing this façade and I do not therefore consider the development proposed would adversely affect the setting of this Listed Building and in this respect I do not find that the scheme would harm the setting of this Listed Building.

Planning Balance

14. The Framework at paragraph 193 requires consideration of the impact of a proposed development on the significance of a heritage asset recognising that great weight should be given to the asset's conservation. In this case I have found that the siting and the appearance of the proposed hub would lead to less than substantial harm to the conservation area.
15. Whilst the proposed hub would utilise a solar panel and has been designed to limit the potential for crime and allow easy wheelchair access, I consider that the siting and appearance of the development would harm the character and appearance of the surrounding area and fail to preserve or enhance this part of the HTCA, these benefits would not outweigh or prevent the harm identified in relation to the main issue and consequently do not meet the tests set out in paragraph 196 of the Framework.

Conclusion

16. For the reasons given above and having taken all matters raised into account, I conclude that the appeal should be dismissed.

Edwin Maund

INSPECTOR



Appeal Decision

Hearing Held on 3 September 2019

Site visit made on 3 September 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Appeal Ref: APP/Z4718/W/19/3229696

Land off Carr Top Lane, Golcar HD7 4JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Brierstone Carr Top Ltd. against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/61/92848/W, dated 31 August 2018, was refused by notice dated 30 November 2018.
 - The development proposed is Reserved matters application for erection of 19 dwellings pursuant to outline permission 2015/90507 for outline application for residential development (within a conservation area).
-

Decision

1. The appeal is allowed and the reserved matters are approved, namely appearance, landscaping, layout, and scale, details submitted in pursuance of condition Nos 1 and 2 attached to planning permission Ref 2015/90507 dated 9 September 2016. The approval is subject to the conditions set out in the attached schedule.

Application for Costs

2. At the Hearing, an application for costs was made by Brierstone Carr Top Ltd against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development set out in the banner above has been taken from the appeal form rather than the original application form. This is because it is a more precise description and I note that it was amended in the same manner by the Council when determining the proposal. In making this change, I am satisfied that it does not affect the interests of the main parties.
4. Since the determination of the application, the Kirklees Local Plan, Strategy and Policies (February 2019) (LP) has been adopted and the relevant policies against which the appeal should be assessed is common ground between the parties. The appeal site is also allocated for housing within the Kirklees Local Plan Allocations and Designations (February 2019).

5. The appeal site was granted outline planning permission for residential development in 2015¹. As part of that permission, all matters other than access were reserved for future consideration. Subsequent to the outline permission, reserved matters approval was granted in 2017 for the erection of 16 dwellings² and that development has commenced. In addition, an application to remove conditions 5 and 6 from the original outline permission was made in June 2018³. These conditions relate to the provision of public open space (POS) and affordable housing, and the application sought their removal on the basis of viability. The application was accompanied with a financial appraisal which concluded that the development was unviable but the application was refused.

Background

Unilateral Undertaking

6. The proposal was partly refused due to its lack of provision of affordable housing and POS. Consequently, in advance of the hearing, it was the intention of the parties to provide a completed agreement under Section 106 of the Town and Country Planning Act 1990. The evidence suggests that this would have taken the form of 2 separate agreements. In relation to the POS, the first agreement would have related to the existing reserved matters consent for 16 dwellings and the payment of a POS contribution of £86,421. The second agreement would require the payment of a 'top-up' sum of £7,935. In total, a POS contribution of £94,356 would be paid across the 2 developments. The agreements would also have made provision for 3 affordable houses. Despite these intentions, the agreements were not completed in advance of the hearing.
7. Since the hearing, and in accordance with an agreed deadline, a draft Unilateral Undertaking (UU) has been submitted. This makes provision for the full POS contribution as well as 3 affordable houses. However, it remains in draft form due to concerns from the Council in relation to the phasing of payments for the POS contribution, as well as in relation to the proposed affordable housing units. Due to its draft form, the UU has not been afforded any weight in my assessment of the appeal.

Viability

8. As identified above, the site benefits from outline planning permission for the erection of 16 dwellings but a financial appraisal in relation to that permission concluded that the development was unviable. In addition, a further appraisal for the appeal scheme on behalf of the appellant arrives at the same conclusion.
9. Based on the evidence before me, the appellant considers the benchmark land value (BLV) of the appeal site to be £1.05 million. This value is taken directly from the DCLG document 'Land value estimates for policy appraisal' (December 2015). However, this document is clear that the values are based purely on desk-based assumptions and do not include policy compliant planning obligations. In addition, the document states that the figures provided are appropriate to a single, hypothetical site and should not be taken as appropriate for all sites in the locality.

¹ 2015/60/90507/W

² 2017/61/91173/W

³ 2018/92044

10. The DCLG document does provide some consistency in relation to levels for profit, professional fees, marketing costs and finance costs, however, the rest of the information is not site specific. Consequently, due to the desk-based approach and because development costs associated with policy compliant proposals have not been factored in, I attach very little weight to the appellant's BLV.
11. The Council's appraisal of the 16 unit scheme suggests that the BLV should be based on values of between £110,000 to £220,000 per acre. Given the size of the site at 0.72 hectares (1.78 acres), the BLV is therefore suggested to be in the region of £195,800 to £391,600. The BLVs provided by the two parties are therefore significantly removed from each other. However, despite this large divergence, both sets of evidence conclude that when factoring in policy compliant planning obligations, the residual land value (RLV) of the 16 unit scheme provides a negative value. The Council's consultant initially arrived at a figure of -£389,306 and the appellant has provided a figure of -£301,099.
12. Much of the reason for the negative RLV relates to the abnormal construction costs that are due to the sloping topography of the site. The levels are such that they require the provision of retaining walls and piled foundations, as well as increased costs in relation to drainage. When querying these costs, the Council's advisors were satisfied with the information received and as a consequence, the RLV reduced to -£426,640. Notwithstanding this advice from their independent consultant, the Council did not endorse their conclusions. In addition, the Council did not seek advice in relation to the findings of the appraisal for this development which the appellant suggests has a policy compliant RLV of -£188,454.
13. The Council consider that because the development has commenced and because the viability of the scheme was not raised at any previous stage, including when the site was promoted for allocation in the LP, the scheme is unlikely to be unviable. Moreover, it is suggested that because the current proposal would likely yield a larger gross development value, it is less likely to be unviable than the 16 unit scheme.
14. The Planning Practice Guidance (PPG) provides clear advice in relation to the viability of development. It confirms that it is the responsibility of site promoters to engage in plan making and to take into account any costs, including risk, to ensure that proposals for development are policy compliant. However, it also states that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Such circumstances could include instances where further information on site costs is necessary.
15. The abnormal costs of the construction work place a financial burden on the development. Whilst such matters could perhaps have been raised earlier in the promotion of the site, there is nothing in the evidence that suggests that these abnormal costs are unreasonable. Furthermore, despite the Council disagreeing with the conclusions in relation to the viability of the scheme, no compelling evidence has been provided to support or substantiate their views. Instead, their views appear to be primarily based on assumptions and assertions that the development is viable because work is ongoing. Although work continues on site, this by itself cannot be used as a reason to ignore viability evidence that has been independently scrutinised. Development

viability is a complex matter and a commercial decision of a developer to continue work on site should not indicate that the findings of a financial appraisal should be automatically questioned.

16. The financial evidence before me has different inputs and costs and the appraisals seek to benchmark against wildly different values. However, the RLVs provided in both sets of evidence demonstrate that the proposal is not a viable proposition. The PPG is quite clear in the way that viability should be assessed. Whilst it was done later than might be expected, and despite my reservations with the BLV, based on the evidence before me, I am satisfied that the appellant has conducted their appraisal in the correct manner. Furthermore, the independent advice provided to the Council also adds weight to my findings that the development is not viable. Consequently, based on the evidence that I have before me, I am satisfied that the development is not financially viable. I have therefore assessed the proposal on this basis.

Main Issues

17. The main issues are:

- i) whether the proposal would make suitable provision for affordable housing, having regard to the requirements of the development plan;
- ii) whether suitable provision is made for POS, having regard to the financial viability of the proposed development, as well as the requirements of the development plan, and if not, the effect of any lack of provision;
- iii) whether the proposal would preserve or enhance the character or appearance of the Golcar Conservation Area (CA);
- iv) the effect of the proposal on local ecology and biodiversity.

Reasons

Affordable Housing

18. Policy LP11 of the LP states that all proposals for housing must aim to provide a mix, including size and tenure, of housing suitable for different household types, taking into account the latest evidence of the need for different types of housing. On developments of more than 10 homes, the policy also requires that 20% of the total units are made available as affordable housing. Despite 20% of 19 units being 3.8, it is common ground that to provide a policy compliant level of affordable housing, the development should provide 3 affordable houses. In addition, in advance of the hearing, it was common ground that the houses could be provided through a Starter Homes model.
19. As identified above, I have found that a policy compliant development would prove unviable for the appellant. However, notwithstanding this position, it was common ground at the hearing that 3 affordable houses would be provided on site. Indeed, from the evidence before me, the appellant has not challenged the need to provide affordable housing as part of this proposal. Moreover, although only in draft form and attracting no weight, the UU makes it abundantly clear that the appellant is willing to provide the necessary houses.
20. As identified above, despite the intentions of both parties at the hearing, a completed legal agreement or undertaking has not been presented to me.

Based on the evidence before me, this is primarily due to a disagreement between the parties in relation to the size of units that would be made available for affordable housing.

21. In advance of the hearing, it was the intention that plots 3, 4 and 5 would be provided as affordable housing. These would be 3 bedroom houses. However, following the hearing, the appellant sought to amend the provision from the 3 bedroom properties to 2 bedroom properties, specifically plots 17, 18 and 19. The Council have not agreed to this request, stating that such an approach would reduce the overall floorspace given over to affordable housing on the site. Moreover, they suggest that the tenure should be revisited due to the reduced floorspace.
22. Although the Council has been generous in their interpretation of what constitutes 20% of the units on the site, there is nothing in Policy LP11 that relates to overall floorspace. The policy simply relates to a percentage of the total units. In my view therefore, the approach advocated by the Council has no basis in policy. Moreover, the policy states that a lower proportion may be acceptable where viability evidence may prejudice the implementation of the proposal. Therefore, despite the reservations identified by the Council, I afford them little weight.
23. The provision of affordable housing is an important public benefit. Consequently, its provision is a material consideration that weighs heavily in my assessment of the appeal. Whilst I have no completed UU before me, at the hearing, the parties were of the view that in the absence of a completed legal agreement, the relevant matters could be secured through compliance with condition 6 of the outline consent.
24. Advice within the PPG states that using a condition to secure a legal agreement is unlikely to be appropriate in the majority of cases as such an approach lacks sufficient clarity for the parties as well as lacking transparency. However, in this instance, the outline consent already contains such a condition, and as a proposal to agree the reserved matters, this condition, and the principle that it establishes, cannot be revisited. Although there is disagreement in relation to the specific affordable housing offer, the number of houses to be provided is common ground. Consequently, based on the evidence before me, I am satisfied that the circumstances are such that the existing condition provides an acceptable mechanism through which to secure the necessary affordable housing.
25. I therefore conclude that the proposal would make suitable provision for affordable housing. It would therefore accord with Policy LP11 of the LP which requires development to provide affordable housing.

Public Open Space

26. Policy LP63 of the LP states that new developments will be required to provide or contribute towards new open space or the improvement of existing provision in the area. However, the policy also confirms that evidence in relation to financial viability can affect the provision of open space. The proposal would not include any usable open space and consequently, it is the expectation of the Council that to mitigate the effect of the development, and to comply with policy, a financial contribution is necessary.

27. The policy justification for Policy LP63 states that the overall provision of open space in Kirklees is generally good, although it also suggests that the distribution of sites is not evenly spread throughout the district. At the hearing, the Council suggested that the contribution would be used to fund replacement play equipment at the nearby Two Furrows Recreation Ground. However, based on the evidence that I have before me, I am not aware of a specific scheme that the contribution would be put towards or any specific shortfall in the existing provision. In addition, the evidence is not clear how the contribution was actually derived or how it would be spent. Consequently, I have no compelling evidence before me which confirms the need for the contribution.
28. Regardless of the above, it is the position of the appellant that the current proposal provides a negative RLV, and for the reasons identified above, this is a conclusion with which I agree. Consequently, even if I found that the POS contribution was necessary to make the development acceptable, it would not be forthcoming. The policy confirms that the viability of a development can influence the requirement to contribute towards the improvement of existing provision. Therefore, whilst the proposal would not make provision for POS, this is an approach that is supported by policy. Furthermore, there is nothing in the evidence before me to confirm that by not making the contribution, the development would be so harmful as to warrant the withholding of permission on this matter.
29. Therefore, for the reasons identified above, although the proposal would not make provision for POS, I conclude that this would not give rise to any adverse impacts due to existing provision in the area. Accordingly, it would comply with Policy LP63 of the LP which requires new housing development to contribute towards new open space or the improvement of existing provision in the area, unless the development clearly demonstrates that it is not financially viable.

Effect on CA

30. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
31. Within its evidence, the Council has provided a report which analyses the CA. Whilst it is not formally identified as a conservation area appraisal (CAA), it is akin to such a document and consequently, for the purposes of this appeal, I have treated it in this manner. The CAA states that the character of the CA is largely derived from its location and setting, likening it to an Italian hill village due to its topography, and organic form. It is common ground that much of the significance of the CA derives from this location and the topography.
32. The CAA states that the urban grain of the CA is characterised by small linear plots which dictated the overall design of many of the buildings within the area. Furthermore, whilst not explicitly stated within the CAA, the Council considers that the orientation of houses following the contours of the land is another notable feature of the CA. Whilst this is indeed a notable feature, long views towards the site also demonstrate that there are examples of buildings that run perpendicular to the prevailing contours. Indeed, there are many examples of gable ends with their ridges appearing to run down the slope rather than across it, including a small residential development immediately to the south east of the appeal site. Consequently, whilst the predominant feature of the built form is buildings running with the contours, there are examples of buildings that are

- sited contrary to this. Moreover, where these buildings exist, in my view, they continue to contribute to the organic form of the village identified within the CAA. Accordingly, they do not harm or detract from the character or appearance of the CA.
33. The development would introduce 19 dwellings onto the site. The proposed access road would enter from the north east corner and run diagonally into the site. The proposed layout would see houses bounding both the northern and southern boundaries of the site and in this respect, they would follow the contours of the land. Plots 8 and 9 would follow the alignment of the proposed access road and plot 10 would be located to the south of these diagonally sited properties. The Council raises no objection to these parts of the proposed layout and they are consistent with the existing reserved matters approval.
34. The Council's concerns relate to plot 16, a detached dwelling, and plots 17, 18 and 19 which form a terrace of 3 houses that would run perpendicular to the topography of the site. These units would be located relatively centrally within the development. Furthermore, due to the proposed road layout the units would be somewhat removed from the built form to the north and south of the site. As a consequence, they would be clearly visible when considered as part of the long views towards the CA.
35. Despite this, plots 16 – 19 are part of a bigger development and in long views, they would be experienced as part of the broader layout. As identified above, this includes a number of houses which are sited so that they run against the contours of the land. Consequently, although plots 16 – 19 would be a clear feature of the development, due to the organic grain of the CA, they would comfortably assimilate with its prevailing character and appearance.
36. The proposal would not include any identifiable open space. Instead, the space around the buildings would be defined by the roads, parking spaces, front and side gardens and private amenity space. Within the CA, open space is primarily incidental. Long views do not reveal expansive areas of open space, and instead the organic form of buildings and the presence of mature trees are the prevailing characteristics.
37. The CAA confirms that the village has little formal public space but it does identify the importance of mature trees and gardens that are visible from the public realm. The proposal would retain the mature trees to the south and west boundaries of the site. Furthermore, there are landscaping opportunities to the front of the houses. Consequently, I am satisfied that the proposed layout would complement the prevailing character and appearance of the CA.
38. For the reasons identified above, I conclude that the proposal would preserve the character and appearance of the CA. It would therefore accord with Policies LP2, LP24 and LP35 of the LP. Taken together, these policies promote good design that has regard to form, scale, layout, and details, and which protects, respects, preserves or enhances the qualities which contribute to the character of an area.

Ecology

39. Policy LP30 of the LP states that development proposals will be required to, amongst other things, minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity

enhancements and habitat creation where opportunities exist. In this respect, it is entirely consistent with the Framework which states at paragraph 170d, that planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on, and providing net gains for, biodiversity.

40. However, the site already benefits from outline planning permission and condition 23 of that permission relates to biodiversity considerations. It states that no development shall take place until a Landscape Management Plan (LMP) has been approved by the Local Planning Authority. It also states that the LMP shall extend to the protected and retained tree cover to the south and west of the site and that it shall incorporate the planting of native species, the installation of a variety of bird boxes, and the installation of bat tubes. The reason given for the condition is in the interests of retaining and enhancing the biodiversity of the site, however, the condition does not require a specific net gain in biodiversity.
41. The proposal has been accompanied by a Landscape plan however, its content is limited, and the parties agreed at the hearing that it could, and should, be strengthened should the appeal be allowed. Furthermore, based on the evidence before me, the landscape plan would be unlikely to provide a biodiversity net gain. In this respect therefore, the proposal would conflict with the local and national policy.
42. Despite this, and subsequent to condition 23 on the outline permission, the extant reserved matters approval requires details of biodiversity enhancement measures to be submitted prior to the commencement of development. I have no compelling evidence before me to confirm that if the appeal proposal were to be implemented, its effect on biodiversity would be materially different to the existing reserved matters approval. The reserved matters approval therefore represents a realistic fallback position that holds a significant level of weight in my assessment of the appeal.
43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Despite the apparent conflict with the development plan, the requirements of the outline permission and the clear fallback position provided by the existing reserved matters approval, represent material considerations of significant weight. Indeed, due to the development already taking place, I am satisfied that they outweigh the requirements of the development plan.
44. Therefore, for the reasons identified above, subject to a suitably worded condition, I conclude that the proposal would have an acceptable effect on local ecology and biodiversity.

Conditions

45. Due to my findings set out above, conditions are necessary in the interests of precision to list the approved drawing numbers. In addition, due to the location of the appeal site within a CA, conditions are necessary to agree facing materials and boundary treatments. Conditions 3, 4, and 5 are also necessary in the interests of safeguarding the existing trees on the site.

46. As identified above, a condition is necessary to ensure that the landscaping proposals are suitably robust, and therefore condition 7 replicates the requirements of the extant reserved matters approval. In addition, conditions 8, 9, 10 and 11 are necessary in the interests of highway safety.
47. Despite the concerns from the appellant in relation to condition 12, I am satisfied that the condition is necessary to promote alternative means of transport as well as the safe storage of bicycles. I am also satisfied that in light of the reserved matters that are being approved at this stage, the requirements of the condition suitably relate to matters of layout.
48. Condition 13 relates to a lighting strategy. Whilst such a condition does not exist on the extant reserved matters approval, and although a lighting scheme has been agreed through highway work approval, the condition is necessary due to the sensitivities of the site with specific regard to its location within a conservation area and its ecological value. Finally, condition 14 is necessary to ensure the development is provided with a suitable drainage scheme.
49. The relevant triggers for the conditions were all agreed at the hearing and are therefore common ground. Consequently, I have no compelling evidence before me to disagree with their requirements.

Conclusion

50. For the reasons identified above, the appeal should be allowed.

Martin Chandler

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby approved shall be carried out in accordance with the following drawing numbers: MI074 001 A; MI074-003 F; 2748/1 K; 2B-A; 2B-B; 2B-A1; 3B-A-P01; 3B-A-P02; 3B-B-P01; 3B-B-P02; 3B-C-P01; 3B-C-P02; 3B-D-P01; 3B-D-P02; 4B-A-P01; 4B-A-P02; 5B-A-P01; 5B-A-P02; Garage SG1; Garage (Plot 2); Garage DG1 except as may be required by other conditions.
2. Prior to superstructure works commencing (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) details and samples of all external facing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the details so approved.
3. The development hereby approved shall be completed in accordance with the advice and directions contained in the Arboricultural Method Statement (JCA, ref: 13478-C/AJB). These measures shall be implemented and maintained throughout the construction phase and retained thereafter.
4. No additional work, beyond that agreed under this reserved matters consent, shall be carried out on any trees within the site without the prior consent in writing of the Local Planning Authority.
5. Before any materials are brought on site or development commences (except in relation to those aspects of the development that also form part of the 16unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) the developer shall erect protective chestnut paling or similar fencing around all trees, shrubs or hedges to be retained, to the branch spread of individual trees or groups of trees/shrubs. The applicant shall obtain the Local Planning Authority's written confirmation that the fence is satisfactory and shall maintain such fencing unaltered until the development is completed.
6. Prior to development commencing (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) details of all boundary treatments, including those to separate the site from 1 and 1A Carr Top Lane, and those to separate the domestic curtilages of the southernmost plots from the wooded bank adjacent to Brook Lane, shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be implemented in accordance with the details so approved.
7. Prior to development commencing (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) details of biodiversity enhancement measures for the entire site, including measures that will ensure a biodiversity net gain is achieved, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in accordance with an agreed timescale, and subsequently retained for the lifetime of the development.

8. The development shall not be brought into use until all areas indicated to be used for parking on the submitted plans have been marked and laid out with a hardened and drained surface in accordance with the Communities and Local Government and Environment Agency's "Guidance on the permeable surfacing of front gardens (parking areas)" published 13/05/2009 (ISBN 9781409804864) as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) these areas shall be so retained, free of obstructions and available for the use specified on the listed plans.
9. No development shall take place (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) until a scheme detailing the proposed internal adoptable estate roads has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines, together with an independent safety audit covering all aspects of work. Before any building is brought into use the scheme shall be completed in accordance with the scheme shown on the approved plans and shall be retained thereafter.
10. Before development commences (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) details of storage and access for collection of wastes from the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be provided before first occupation and shall be so retained thereafter.
11. Prior to the commencement of development (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) a scheme detailing the location (and including cross-sectional information together with the proposed design and construction details) of all new retaining walls adjacent to existing/adoptable highways (including any modifications to the existing highway retaining walls on C556 Brook Lane and Carr Top Lane and the supporting embankment) shall be submitted to and approved in writing by the Highway Authority. The approved scheme shall be implemented prior to the commencement of the proposed development and thereafter retained during the life of the development.
12. Prior to the occupation of any part of the development hereby approved details of secure, covered and conveniently-located cycle parking for use by residents of the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the details so approved.
13. Prior to the commencement of superstructure works (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) a lighting strategy for the

entire site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the details so approved.

14. Prior to the commencement of works (except in relation to those aspects of the development that also form part of the 16-unit scheme granted Reserved Matters consent ref: 2017/91173 and where relevant conditions of that scheme have been discharged) a scheme detailing the location (and including cross-sectional information together with the proposed design and construction details) of all new surface water attenuation culverts/tanks located within the proposed highway footprint shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved scheme shall be implemented prior to the commencement of the proposed development and thereafter retained for during the life of the development.

APPEARANCES

FOR THE APPELLANT

Carl Stott	nineteen47 Ltd
Dax Bradley	Brierstone Ltd

FOR THE LOCAL PLANNING AUTHORITY

Victor Grayson BA(Hons) MTP MAUD	DM Masterplanner
Julian Dawson BSc (Hons) MRICS	Housing Growth Manager
Tom Stephenson MSc MCIEEM	Biodiversity Officer

INTERESTED PERSONS

Cllr Richard Murgatroyd	Borough Councillor – Golcar Ward
Robert Dawson	Local Resident

DOCUMENTS SUBMITTED DURING THE HEARING

- 1) Map provided by the Council identifying long views towards the appeal site.
- 2) Map provided by the Council identifying areas within the CA that the Inspector was requested to visit as part of the site visit.

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1) Correspondence in relation to the discharge of conditions for 2015/90507 – dated 17 April 2019
- 2) GVA Viability Assessment – August 2018
- 3) Copy of correspondence referred to in Q10 of the Appeal Questionnaire
- 4) Draft Unilateral Undertaking and associated correspondence



Appeal Decision

Site visit made on 8 October 2019

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2019

Appeal Ref: APP/Z4718/W/19/3232657

Barn adjacent Hey Farm, Holt Head Road, Slaithwaite, Huddersfield, West Yorkshire HD7 5TU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr & Mrs Mark & Allison Lee against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/90967, dated 22 March 2019, was refused by notice dated 14 May 2019.
 - The development proposed is prior notification for change of use from agricultural building to one dwelling and associated operational development.
-

Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q(a) and Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from agricultural building to one dwelling and associated operational development at Barn adjacent Hey Farm, Holt Head Road, Slaithwaite, Huddersfield, West Yorkshire HD7 5TU in accordance with the application reference 2019/90967 made on 22 March 2019 and the details submitted with it including drawing numbers: 3265 (0-) 01, 3265 (0-) 02, 3265 (0-) 03, 3265 (0-) 04 and 3265 (0-) 05, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q(a) and Q(b), paragraph Q2(3) and subject to the following conditions:
 - 1) The dwelling shall not be occupied until 3 parking spaces are provided to serve the development. The spaces shall be provided in the same area of the site within which 2 spaces are shown on drawing. No. 3265 (0-)04 'Proposed Site Layout' and shall have minimum dimensions of 2.5 metres by 5 metres. The spaces shall be marked out and formed by a hardened and drained surface in accordance with the Communities and Local Government and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) these areas shall be so retained, free of obstruction and available for use as parking spaces thereafter.

- 2) The dwelling shall not be occupied until details of the removal/storage of and access for the collection of waste (foul sewage and domestic waste/recycling) from the dwelling have been submitted to and approved in writing by the Local Planning Authority. The works comprising the approved details shall be provided before the dwelling is first occupied and shall be so retained, free of obstruction and available for use for the removal/storage of waste thereafter.

Preliminary Matter

2. Paragraph X of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) defines the term curtilage for the purpose of Part Q. The submitted plans show an area of land immediately beside and around the building to be used as a garden area for the proposed dwelling. Parking spaces are also shown on an area of land close to the building to be created by the demolition of an implement shed. It does not appear that the curtilage areas proposed for the building exceed the land area occupied by the building itself. The proposed curtilage areas of the building therefore appear to meet the definition set out in paragraph X and I have determined the appeal accordingly.

Main Issue

3. The main issue is whether the proposal is permitted development under Schedule 2, Part 3, Class Q of the GPDO, having particular regard to whether the proposed building operations are reasonably necessary to convert the building to a dwelling.

Reasons

Permitted Development

4. Class Q(b) of the GPDO permits the change of use of a building and any land within its curtilage from a use as an agricultural building to a dwelling together with building operations reasonably necessary to convert the building to a dwelling. Paragraph Q.1(i) states that development is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls or water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling and partial demolition to the extent reasonably necessary to carry out permitted building operations. The Planning Practice Guide (PPG) at paragraph 105 states that it is not the intention to allow rebuilding work which would go beyond what is reasonably necessary and that it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.
5. The existing building has a concrete portal frame and is enclosed on all sides, being built into the hillside at the rear. The external walls are formed by blockwork to a height of approximately 1.8 metres with a combination of corrugated fibre cement sheeting and timber boarding above. The roof is covered in corrugated fibre cement cladding and the building has a concrete floor. A Structural Inspection Report dated June 2018 concludes that the building is structurally sound and that it is suitable for conversion to a dwelling. The findings of the structural report have not been disputed by the Council.

6. The proposed change of use of the building to a dwelling would involve various works to convert it including replacement roof covering; the insertion of new windows and doors, the construction of stone walling and timber cladding; the provision of internal walls and floors and of insulation. It appears from the evidence that the concrete frame, concrete floor, blockwork and timber frame above it would all be retained. Although various alterations are proposed to the building to change its use to a dwelling, based on the evidence before me and as a matter of fact and degree, I am satisfied that the existing building is suitable for conversion, that all of the works proposed to it are reasonably necessary to convert it to a dwelling and that the works would not amount to rebuilding.
7. In reaching this conclusion I have had regard to the findings in Hibbert¹ with regard to the difference between conversion and rebuild and also to the findings of the Inspector who dismissed a previous appeal at the site (Ref APP/Z4718/W/16/3162769). It seems that, in the absence of any technical evidence, the previous Inspector considered that the building would require almost complete demolition and reconstruction to be used as a dwelling. However, as stated, the 2018 structural report has confirmed that the building is structurally sound and no substantial new structural elements are proposed. Consequently, I consider that the concerns of the previous Inspector have been satisfactorily overcome by the proposal.

Prior Approval matters

8. As I have found that the proposal is permitted development, I must now consider the conditions set out in paragraph Q.2., that is whether prior approval is required and ought to be granted in respect of the listed matters (a) to (f). When considering the application, the Council raised no objections in relation to the matters set out at Q.2 (a) to (f), subject to the imposition of conditions regarding parking and waste collection. Having regard to the evidence and from my observations on site, I see no reason to disagree with the Council's conclusions in relation to these matters.

Conditions

9. Any approval granted for the change of use of a building and any land within its curtilage from a use as an agricultural building to a dwelling under Article 3(1) and Schedule 2, Part 3, Class Q is subject to the condition Q2(3) which specifies that development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.
10. In addition to the standard condition, I have also imposed conditions regarding parking and waste collection details. This is in order to ensure that the highways and transport impacts of the development are acceptable and in order to ensure that suitable drainage and waste collection is provided having regard to the position of the building in a reasonably remote location. Where necessary the wording of the conditions suggested by the Council has been amended slightly in the interests of precision and clarity.
11. I have not imposed the conditions suggested by the Council relating to the extent of the curtilage and to an electric vehicle charging point as I do not

¹ Hibbert and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin)

consider that such conditions are reasonable or necessary having regard to the submitted details and nature and scale of the proposal and I have seen no policy justification for the charging points.

Conclusion

12. For the above reasons and having regard to all matters raised, I conclude that the appeal should be allowed and prior approval should be granted.

Beverley Wilders

INSPECTOR



Appeal Decision

Site visit made on 13 November 2019

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 December 2019

Appeal Ref: APP/Z4718/D/19/3239716 85 Mount Avenue, Huddersfield, HD3 3XS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Asiya Ashraf against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/62/92595/W, dated 1 August 2019, was refused by notice dated 27 September 2019.
 - The development is two-storey side and rear extensions and porch to front.
-

Procedural Matters

1. In determining the planning application, I note that the Council listed the Plans and Specifications Schedule on the Notice of Decision as including Drawing Refs: MA04 Rev. B (Proposed floors) and MA05 Rev. B (Proposed elevations). However, the plans as submitted by the appellant as having been before the Council in the determination of the planning application were Drawing Refs: MA04 Rev. A (Proposed Plans) and MA05 Rev. A (Proposed Elevations), with both submitted plans indicating the porch to have been reduced in size.
2. Further to consultation with the main parties, it would appear that the Council erred in identifying Revision B within the Notice of Decision, with an acceptance that no such plans were submitted during the course of the planning application. I am therefore satisfied that the plans that were before the Council in determining the planning application were the Revision A plans identified by the Council.

Decision

3. The appeal is allowed and planning permission is granted for two-storey side and rear extensions and porch to front at 85 Mount Avenue, Huddersfield, HD3 3XS in accordance with the application Ref. 2019/62/92595/W dated 1 August 2019, and subject to the following conditions;
 - 1) The development hereby approved shall be carried out in accordance with the approved drawing numbers: MA01 (Location Plan), MA02 (Existing Plans), MA03 (Existing Elevations), MA04 Rev A (Proposed Plans), and MA05 Rev A (Proposed Elevations).
 - 2) The materials used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the host dwelling and the area.

Reasons

5. The appeal property is comprised of a two-storey semi-detached dwelling situated on the northern side of Mount Avenue, with Lindley Moor Road located to the north of the appeal site, beyond the extent of the curtilage and rear boundary. The appeal site is set within an established residential area.
6. Planning permission was approved for two-storey side and rear extensions (*LPA Ref. 2018/91790*) in July 2018. It was evident upon visiting the appeal site that the construction of the side and rear extensions had been externally completed, albeit that internal works to the extensions were still being undertaken, but that the porch was still under construction. However, the works undertaken exhibited some variation from those approved, thus necessitating the planning application the subject of this appeal. In particular, the setback of the side extension from the front elevation has been reduced from 0.5 metres to 0.1 metres, and a limited set-down of the ridge height has been removed with the ridge line of the extension now at a consistent height across the extent of the resultant dwelling.
7. In determining the planning application, the Council has cited Policy LP24 (parts (a) and (c)) of the Kirklees Local Plan Strategy and Policies 2019 (the Local Plan), which seek to ensure that good design should be at the core of all proposals, and that good design is promoted by ensuring the form, scale, layout and details of development respects and enhances the character of the townscape, and that extensions are subservient to the original building and in keeping with the existing buildings in terms of scale and materials. My attention is also drawn to the accompanying policy justification which sets out that extensions should seek to avoid a "terracing" effect in the streetscene, where this is incompatible with the existing character of the area.
8. The Council contends that the proposed development would, by virtue of the siting, scale and design of the side extension, result in a terracing effect within the streetscene. However, even though the Council has expressed a preference that side extensions should leave a gap of 1 metre to the boundary, it has already accepted by virtue of the 2018 planning permission a two-storey extension to the boundary in this instance.
9. I accept that the two-storey side extension no longer features the extent of set-back and subservience by a varied ridge height as originally approved. However, in the context of the street scene and the approved scheme I did not find these to ultimately be the critical factors in seeking to avoid any apparent terracing effect, in contrast with the absence of a gap to the boundary. As such, although it would undoubtedly have been preferable for the development to have retained the previous set-back and set-down, I do not find that their omission from the scheme results in a harmful effect on the streetscene or the host dwelling, or appear as uncharacteristic within the area, when considered in the context of the previously approved scheme.
10. Turning to the porch, I have considered the Council's apparent contention that as the porch would exceed the permitted development right threshold for such

development and would require planning permission, that it would have an unacceptable and overly prominent impact on the streetscene. However, I observed there to be a considerable variation of design approach and scale of front extensions and porches in the area, and in this regard I disagree with the Council's position. I am satisfied that the design of the porch would neither appear as an uncharacteristic nor obtrusive feature within the streetscene or overwhelm the existing dwelling by virtue of its scale.

11. Whilst I am not persuaded by the appellant's contention that the design is particularly innovative, I do not agree with the Council's assessment of the harm which the scheme has on the character and appearance of the streetscene, area and host dwelling. Having regard to the extant planning permission from July 2018, I am therefore satisfied that the development is not incompatible with the area and does not therefore conflict with Policy LP24 of the Local Plan.

Other Matters

12. A number of other matters have been raised by interested parties in respect of the development, including concerns over the approach taken by the appellant to procedure during the course of the development, the potential for the setting of a precedent for future similar development, and a number of concerns regarding the construction and use of a garage to the rear with access on to Lindley Moor Road.
13. I sympathise with the frustration of interested parties regarding the situation which has arisen regarding the development of the appeal site, particularly in light of the Council's previous approval of an alternative scheme on the appeal site. However, whilst I would accept that there would seem to be some procedural shortcomings in the overall approach taken by the appellant, ultimately the appellant has sought to regularise the unauthorised position created by the development as constructed through the revised planning application, and ultimately by this appeal.
14. With regards the potential for the setting of a precedent for similar development to occur within the streetscene and area, as I have set out in my reasoning, there are specific circumstances related to the development of this site which have been created by the previous planning permission, which would not create a precedent leading to the unavoidable acceptance of similar development elsewhere. I am confident that the Council would continue to be able to resist unacceptable development and extensions in the area and that this approval would not set a precedent for future development.
15. With regards to issues raised regarding the positioning, impact and use of the garage to the rear of the property, these are matters beyond the scope of the appeal which is before me, given that the garage does not form part of the development under consideration.

Conditions

16. In addition to a condition regarding the identification of plans, the Council has suggested a condition related to the use of matching materials for all external surfaces of the development. Even allowing for the completion of much of the development, I am satisfied that such a condition would be necessary in the interests of the character and appearance of the dwelling and the area.

Conclusion

17. For the reasons given above, the appeal is allowed subject to the imposition of the conditions as listed.

Martin Seaton

INSPECTOR



Appeal Decision

Site visit made on 3 December 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/Z4718/W/19/3237464

Adj 1 Spring Lane, Holmfirth HD9 2LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Cruickshank against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/61/93508/W, dated 19 October 2018, was approved on 29 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling.
 - The condition in dispute is No 2 which states that: "Notwithstanding the details shown on approved drawing no. 138/2-001H, the approval of landscape as a reserved matter does not extend to the erection of a 1.8m high timber fence or the proposed siting of such fencing as shown on the aforementioned plan. Before the dwelling is first occupied details of an alternative boundary treatment shall be submitted to and approved in writing by the local planning authority and the boundary treatment completed in accordance with the approved details. For the avoidance of doubt the revised boundary treatment shall comprise the erection of a stone wall, constructed in stone to match that of the host building, along the full length of the south western boundary of the site, to accord with the red line boundary of the outline planning permission no. 2016/91502 which is deemed to represent the shared boundary between the application site and the property named 'Somerton'. The scheme shall include details of tree root protection. The overall height of the boundary wall shall extend to 1.5m above the finished floor level of the approved dwelling's ground floor, other than the first five meters measured from the boundary to Liphill Bank Road, which shall extend 1.0m above the finished floor level of the approved dwelling. The boundary treatment along the south western boundary shall thereafter be retained in accordance with the approved details."
 - The reason given for the condition is: "To ensure this landscape detail respects and enhances the character of the site and the wider townscape, where stone walls are the predominant feature. To ensure the layout and appearance of the dwelling, in particular the lounge window, do not result in an undue loss of privacy to the occupiers of Somerton. This would accord with Policy PLP24 (a) and (b) of the Kirklees Local Plan (as modified) and Policies within Chapter 12 of the National Planning Policy Framework."
-

Decision

1. The appeal is allowed and the planning permission ref: 2018/61/93508/W for the reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling at Adj 1 Spring Lane, Holmfirth HD9 2LN approved on 29 March 2019 by Kirklees Metropolitan Borough Council, is varied by deleting condition (2) and substituting for it the following condition:

2) Prior to the hereby approved development being brought into use, the 1.8m high close boarded timber fence, as shown on plan Ref 138/2-001 Rev. H.

along the full length of the site's west boundary shall be erected. Thereafter the approved boundary fencing shall be retained.

Application for Costs

2. An application for costs was made by Mr Cruickshank against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Kirklees Local Plan (KLP) was adopted on 27 February 2019 after the refusal of the application at Committee on 13 December 2018 but prior to the issue of the decision notice on 29 March 2019. The Council refers to the now adopted KLP in its Statement of Case and the relevant adopted policies have been submitted as part of the appeal. Therefore, the parties have had the opportunity to comment upon the KLP and relevant policies as part of the appeal and I have determined the appeal on that basis. I am satisfied that no interested party has been prejudiced by this approach.
4. The Council amended the development description from 'application for single dwelling dealing with layout, scale, appearance and landscaping at land adj 1 Spring Lane, Holmfirth' to 'reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling.' This is also the description used by the appellant on the planning appeal form. I consider this to be a more accurate description of the proposed development and have therefore considered the appeal on this basis and used it in the formal decision.

Background and Main Issue

5. The appeal site has permission for the erection of a single dwelling¹ and permission was previously granted for reserved matters². Following this, development commenced on site but not in accordance with the approved plans, the principal difference being the layout with the locations of the garage and lounge being swapped. A further application for reserved matters was submitted³ to reflect this change to the layout and was granted subject to conditions.
6. This approval of reserved matters includes condition 2, which requires the erection of boundary treatment along the full length of the south western boundary of the appeal site comprising a stone wall, constructed in stone to match that of the host building. The reason given for this is to ensure that the landscaping respects and enhances the character of the site and wider area, and that the layout and appearance of the dwelling do not result in an undue loss of privacy to the occupiers of the adjacent property of Somerton. The appellant objects to condition 2 and seeks its removal or its removal and replacement with a modified condition to permit a boundary fence.
7. There is some dispute between the parties as to whether it was valid to consider the proposed boundary treatment on the appeal site as part of the application for reserved matters, and whether it was appropriate for a condition to be imposed regarding its form, dimensions and material. One of the

¹ Ref: 2016/91502

² Ref: 2017/93648

³ Ref: 2018/61/93508/W

reserved matters applied for is landscaping which, as stated within the National Planning Practice Guidance (PPG)⁴, includes, amongst other things, 'screening by fences, walls or other means.' In this respect, I am of the opinion that boundary treatment can be considered as an element of landscaping. Therefore, given the reserved matters applied for and the proposed revision to the layout, I am satisfied that, in considering the planning merits of the detailed scheme, it was relevant and valid to assess and condition the boundary treatment on the appeal site as part of the application.

8. Taking the above into account, I consider the main issue to be, whether condition 2 is necessary and reasonable in the interests of (i) the character and appearance of the area; and (ii) the living conditions of the occupiers of Somerton, with regard to overlooking and privacy.

Reasons

9. The appeal site is a triangular shaped plot on a prominent corner at the junction of Spring Lane and Liphill Bank Road. It sits in an elevated position above the private garden and outdoor seating area of the adjacent detached property of Somerton. It is bounded by a stone wall to the east and a close boarded timber fence to the north. A temporary timber fence has been erected along part of the south western boundary. Holly trees are present along the rest of this boundary which provide some natural screening.
10. The boundary treatment to properties in the surrounding residential area is varied in terms of form and materials. I acknowledge that stone is a predominant building material in the area and that there are stone walls between the houses on an adjacent short terrace on Liphill Bank Road. However, from what I saw on my site visit, although substantial stone walls are the main boundary treatment enclosing the curtilages of dwellings along the back of pavements and roads, it is close boarded timber fences that are the primary boundary treatment which define and separate private garden areas between dwellings.
11. Furthermore, I appreciate that, given the location of the appeal site and the topography of the area, any boundary treatment along its south western boundary would be readily visible and prominent in the townscape, particularly in views looking west at the junction of Spring Lane and Liphill Bank Road. However, I consider that a high, substantial stone wall separating the garden areas of the appeal site and Somerton would be an unduly dominant structure on the boundary of the appeal site and in the street scene.
12. In these respects, with regard to the character and appearance of the area, I consider that the imposition of condition 2 is neither necessary nor reasonable, and that a plain, slim, close boarded, timber fence in this location would not appear wholly incongruous in the street scene and would be less visually dominant than a substantial stone wall.
13. I recognise that the level differences between the garden areas of the appeal site and Somerton, in conjunction with the revised layout, results in the full height windows of the habitable room of the lounge to be above, and in close proximity to, the private garden and outdoor seating area of Somerton. On this basis, I consider that some form of boundary treatment and screening is

⁴ PPG Paragraph: 006 Reference ID: 14-006-20140306

necessary to prevent any harmful overlooking and undue loss of privacy of the occupiers of Somerton. However, this can be adequately achieved by other means, and I am of the opinion that it does not have to be a substantial stone wall to the details specified in condition 2.

14. Therefore, with regard to any harm to the living conditions of the occupiers of Somerton due to overlooking and loss of privacy, I consider that the imposition of condition 2 is neither necessary nor reasonable, and that any overlooking and loss of privacy would be satisfactorily mitigated by a close boarded timber fence to the height of 1.8m as proposed.
15. Paragraph 55 of the Framework is clear in stating that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
16. I consider that the imposition of condition 2 is not necessary nor reasonable in the interests of the character and appearance of the area. In addition, although I consider that boundary treatment can be considered as part of the reserved matter of landscaping and that some form of boundary treatment along the full length of the south western boundary of the appeal site is necessary in the interests of the living conditions of the occupiers of Somerton with regard to overlooking and privacy, it is not necessary nor reasonable to require it to be of a solid stone construction to the details specified in condition 2.
17. For the reasons above, I consider substituting condition 2 for one which requires the erection and retention of a timber fence to be necessary and would be reasonable in all other respects. This would not be out of keeping with the character and appearance of the surrounding area and would ensure that the living conditions of the occupiers of Somerton, with regard to overlooking and privacy, would be protected. Thus, the new condition would ensure that the proposed development complies with the objectives of Policy LP24 (a) and (b) of the KLP which state that proposals should promote good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape; and that they provide a high standard of amenity for future and neighbouring occupiers. It would also be consistent with the objectives of Paragraph 127 of the Framework, which requires development to be sympathetic to local character and with a high standard of amenity for existing and future users.

Other Matters

18. I have given careful consideration to the representations made by the occupiers of Somerton. They consider that the removal of condition 2 or its removal and replacement with a modified condition to permit a boundary fence would breach Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. Article 1 of the First Protocol is the right to the peaceful enjoyment of possessions including property, and Article 8 is the right to respect for private and family life, home and correspondence.
19. I have concluded that a 1.8m high, close boarded, timber fence would acceptably mitigate any harmful overlooking into the private garden and outdoor seating area of Somerton. On this basis, I consider that the replacement of condition 2, with one which requires the boundary treatment to

be a timber fence rather than a stone wall, would mean that their human rights would not be prejudiced, and so, it would not constitute a breach of Article 1 of the First Protocol or Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998.

20. I note the comments made by the occupiers of Somerton regarding the inaccuracy of the boundary as drawn on the plans. However, in terms of planning, the Council is satisfied that the red line boundary of the original outline planning permission represents the shared boundary between the appeal site and Somerton and I have no reason to disagree.
21. I have had regard to the landscape value of the existing mature elm trees that are within the garden of Somerton but which overhang the appeal site; the assessment which concludes that the trees are in good physiological and structural condition; the recommendation that they should have a Tree Preservation Order (TPO) placed on them; and the concerns regarding works that have already been carried out which may have impacted on their roots. I agree that the trees make a positive contribution to the character and appearance of the area. However, any TPO would be issued by the Council and this, and any works that have already been carried out, are not for me to consider in the context of an appeal under Section 78 of the Act.
22. I am aware of the offer made by the occupiers of Somerton to co-operate with the appellant and to allow the appellant access onto their land to undertake any work that complies with condition 2. However, this is a private matter and not for me to consider in the context of an appeal under Section 78 of the Act.
23. I have had regard to the comments of the occupiers of Somerton highlighting the local significance of Somerton and that it should share some of the protection afforded to listed buildings. Although the building may be of local architectural and historic interest, as it is not statutorily listed, no additional protection can be afforded to the building or its setting in the consideration of this appeal. As such, this does not alter or outweigh my conclusion on the main issue.
24. I note Holme Valley Parish Council's objection to the application and concerns about the loss of off-road parking and turning area for vehicles which could have implications for highway safety. Nevertheless, the Council has stated that the access has been implemented in accordance with the outline permission and it is satisfied that it is acceptable in highway terms, and there is no evidence before me which would cause me to disagree with this conclusion.
25. I acknowledge the concerns of the occupiers of Somerton and those of Holme Valley Parish Council regarding the issue of unauthorised works carried out by the appellant and the decision of the Council to not proceed with any enforcement action. However, it is not within the remit of the appeals process to comment on the internal procedures of the Council, and so, I do not consider this to be determinative in the appeal.
26. The occupiers of Somerton have stressed that all of the concerns could be addressed by reverting to the original proposal. Be that as it may, that is not what is before me. I have determined the appeal on its own planning merits with regard to the specific location and context of the appeal site.

27. None of the other matters raised alter or outweigh my overall conclusion on the main issue.

Conclusion

28. For the reasons given above, I conclude that the appeal should be allowed and that the planning permission should be varied as set out in the formal decision.

F Cullen

INSPECTOR